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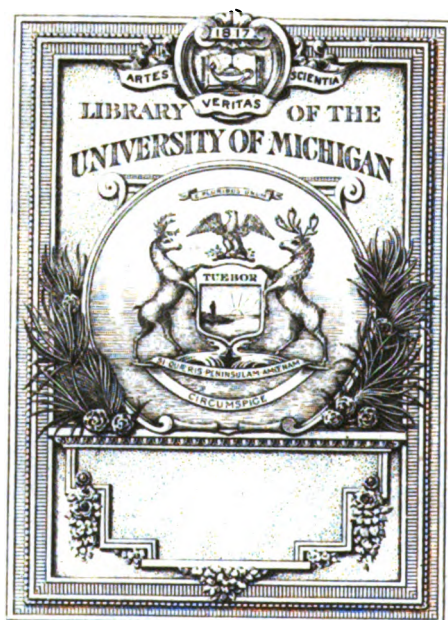
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LEGISLATIVE DOCUMENTS

THE

SENATE AND ASSEMBLY

OF THE

STATE OF NEW-YORK.

FIFTY-THIRD SESSION,

1830.

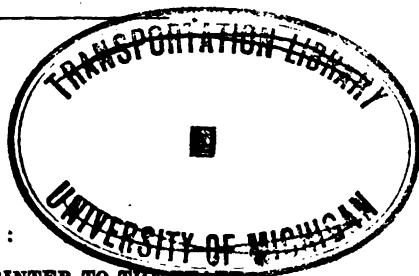
VOLUME IV.

FROM No. 291 TO 494, INCLUSIVE.

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1830.



No. 292.

IN SENATE,

March 19, 1830.

REPORT

Of the committee on banks and insurance companies, to which was referred the bill from the Assembly, to incorporate the President and Directors of the Hudson River Bank.

Mr. Allen, from the committee on banks and insurance companies, to which was referred the bill from the Assembly to incorporate the president and directors of the Hudson River Bank, and in obedience to the resolution of the Senate passed March the 5th, 1830,

REPORTED AS FOLLOWS, TO WIT :—

That the petitioners for this incorporation are numerous, and appear to include some of the inhabitants of almost every town in the county of Columbia.

The population of the city of Hudson, (where the bank is to be located,) is estimated at *six thousand*, and that of the county of Columbia, at *forty thousand inhabitants*.

The manufactures, commerce, and trade of this city, appear to have greatly increased of late years ; and from statistical information furnished the committee, they are enabled to state, that for manufacturing purposes, there has been invested about *two million of dollars*.

It is stated by Williams, in his Register for 1830, that there are in the county of Columbia, six incorporated manufacturing companies.
[No. 292.]

nies ; and on the streams in the vicinity of Hudson, eight cotton, two paper, one calico print, two carpet, two flannel, four woollen, and one iron factory : there is also an extensive air furnace, several flouring mills, and four distilleries.

For commercial purposes, chiefly in the whale fishery, there has been invested about *forty thousand dollars*. Two ships, one of 460, and the other of 320 tons, are now fitting out for whaling voyages ; one for the Pacific ocean, and the other for the Brazil banks.

There is also a considerable business carried on in freighting, by the means of sloops and tow-boats, between the city of Hudson and New-York ; and for this purpose, as the committee are informed, more than *eighty thousand dollars* is invested.

There are about eighty stores of merchandize in the city of Hudson, besides tanneries, and numerous mechanical operations, conducted by individual citizens.

These various branches of trade cannot be conducted profitably, without the facilities afforded by bank accommodation ; and the petitioners justly complain, therefore, that they are compelled to depend for such accommodation upon distant institutions. Some of them resort to banks in Massachusetts and Connecticut ; while others are driven to Catskill, Poughkeepsie, Albany and New-York ; and even there they are frequently disappointed.

The city of Hudson has been peculiarly unfortunate in their banking operations, as the only two banks chartered for the accommodation of its inhabitants have failed ; and considerable loss has been sustained, both by themselves as well as by other parts of the State. These failures, however, were owing more to the imperfect provisions of the acts of incorporation, than to any moral turpitude of those who directed the operations of the institutions. Nor had any of the present petitioners, as the committee are informed, any part in conducting the aforesaid banks.

The committee are of opinion, from the best information within their reach, that the manufacturing, commercial, and trading part of the inhabitants of Hudson and its vicinity, require the accommodation of a bank ; and that the solvency of such an institution, under the provisions of the act referred to them, will be fully sustained ; and they therefore report in favor of the passage of the bill.

No. 293.

IN ASSEMBLY,

March 10, 1830.

REPORT

Of the Select Committee on the petition of sundry inhabitants of the counties of Erie and Niagara, praying that Clark Hilton may erect a dam and lock upon Tonawanda creek.

Mr. Hull, from the select committee, to whom was referred the petition of the inhabitants of the counties of Erie and Niagara, praying that Clark Hilton may erect a dam and lock upon Tonawanda creek,

REPORTED:

That the Legislature, in 1826, passed an act, declaring Tonawanda creek a public highway, from the junction of the Erie canal at Pendleton with said creek, to Murder creek, a distance of about twelve miles. That several years anterior to that time, a dam and mill were erected upon said creek, about two miles above the junction of the canal, which is now owned, together with the adjacent lands, by Clark Hilton.

The petitioners represent that the public good requires the continuance of said dam,—1st. For hydraulic purposes; 2d. To overcome several bars or rapids, and retain the level to Murder creek; and, with the addition of a lock through said dam, will render the said Tonawanda creek boatable at all seasons within the points aforesaid.

Your committee are unanimously of opinion that the prayer of the petitioners is reasonable and ought to be granted; they have therefore instructed their chairman to ask leave to introduce a bill.

IN ASSEMBLY,

March 10, 1830.

REPORT

Of the Select Committee, to whom was referred the petition of sundry inhabitants of the county of Saratoga, relative to the establishment of a race-course in said county.

Mr. S. Stewart, from the select committee, consisting of the members attending this House from the county of Saratoga, to whom was referred the petition of sundry inhabitants of said county, praying for the establishment of a race-course for the purpose of testing the speed and improving the breed of horses, and also the several remonstrances of other inhabitants of said county against the measure,

REPORTED :

That they have given to the subject that patient consideration which seems to be demanded by its importance.

Your committee are of opinion that advantages might accrue to the agriculture of the county, from a judicious choice of blood, and constant attention to proper crosses, for improving the quality of their cattle of every description : But such is the variety of the qualities of that useful animal the horse, from the generous charger to the veriest jade, that he would seem to claim the almost exclusive attention of the farmer who would regard profit as the reward of his industry.

The courser (in this country) may be considered of the highest grade of blood horses ; and from him, by judicious crosses with those of lower grades, are produced the best varieties for the saddle and the harness.

The race-course may be considered as a test of the qualities of this animal ; as speed and bottom are both necessary to a successful competition.

The race horse must combine points which are indicative of strength, with that symmetry of parts which gives free and graceful action, which are the most prominent features of beauty in that noble animal, which constitutes his value in the estimation of men.

From these considerations, your committee have arrived at the conclusion, that to encourage the improvement of the breed of horses, would be highly beneficial to the agriculturist of the country.

Your committee must however perceive the fact, that horse-racing, under whatever legal guards you may feel disposed to place them, are attended with evils, and that by the collection of great numbers, consisting of persons of every description, and from almost every motive that can actuate the human mind ; and who will indulge in vicious habits, notwithstanding all the penal laws you may place around them : yet, your committee are also satisfied that the present practice of petty horse-racing, indulged in by a certain class of citizens of said county, which, although in open violation of existing laws, yet, as if by common consent, passes unnoticed, is a far greater evil than a concentration of all on a race-course, which result your committee confidently anticipate from the establishment of one, and they are strengthened in that belief, from the fact, as they are advised, that the Dutchess county races has produced that result.

Therefore, your committee in making a choice between unavoidable evils, do not hesitate at a conclusion. Yet, on this subject, your committee indulge the hope that from the high character of those who may form the association, together with the supervision of the civil authority of the county, with the aid of the sheriff and his deputies, we may look for the adoption and execution of such regulations as may suppress, in a great measure, all gambling, intemperance, and other immoral practices attendant on the unlicens-

ed horse-races, so common in our country. . And from witnessing those higher and more orderly sports, many may lose that zest for low gambling and violation of law, so deleterious to the morals of community.

With these views, and with this hope, your committee have prepared a bill, and directed their chairman to ask leave to introduce the same.

IN ASSEMBLY,

March 10, 1830.

REPORT

Of the Select Committee, on the Memorial of the Mayor, Aldermen and Commonalty of the city of New-York.

Mr. Livingston, from the select committee to which was referred the memorial of the mayor, aldermen and commonalty of the city of New-York, for the passage of an act authorising them to order a further postponement of the sale of lands advertised to be sold for assessments,

REPORTED :

That by virtue of a law heretofore passed by the Legislature of this state, the common council of the city of New-York, directed a sale to be made on the 18th day of January last, of certain lands for non-payment of assessments. The hardships that would fall upon the owners of the then contemplated sale had taken effect by throwing into market, at a very unfavorable period, a large quantity of lands, induced the common council to apply to the Legislature for a law authorising a postponement of the sale. In the draft of the law submitted to the Legislature, a provision was inserted empowering the common council to postpone such sales from time to time, and as often as the common council might deem expedient; but in the law as passed on the 13th day of January last, this provision was stricken out, and authority was only given to postpone any such sale for a period not exceeding fifteen months. The act so passed was received by the common council on the day before that on which the above mentioned sale was advertised to take place, and a special meeting of the board was held on the morning of the

day of sale, for the express purpose of acting upon said law, and a resolution was passed to postpone the sale till the 22d day of March instant. This short postponement was agreed upon as a temporary measure, the said common council being under an impression that the act referred to, gave them the power to postpone the sale as often as they might think proper within the fifteen months therein prescribed; but upon deliberate examination of the act, a doubt has arisen whether it confers power to postpone any such sale more than once. The memorialists therefore ask for the passage of an act in reference to the sale postponed until the 22d inst. and to enable them to do what they would have done, if, instead of being compelled to act hastily in the matter, they had been allowed time to examine the said act, and the extent of powers given by it.

The committee are of opinion that the request is reasonable, and ought to be granted; and they have prepared a bill, which they now ask leave to introduce.

IN ASSEMBLY,

March 10, 1830.

REPORT

Of the Committee on Indian Affairs, on the petition of Baptist Paulus, Jacob Anthony, Anthony Bigknife and Elijah Sconondoa.

Mr. W. K. Fuller, from the committee on Indian affairs, to which was referred the petition of Baptist Paulus, Jacob Anthony, Anthony Bigknife and Elijah Sconondoa, chiefs of the first Christian party of the Oneida Indians,

REPORTED:

The petitioners state, that under the act passed February 11th, 1829, entitled "An act relating to the purchase of lands from the first Christian and Orchard parties of the Oneida Indians," a treaty was made with the Acting Governor, in the month of October last past, by which all their land, (being about 2,300 acres,) was sold to the people of this state; and they solicit the passage of a law so to amend the said act as to permit them conditionally to occupy, clear up and improve a certain portion of the land thus disposed of.

The treaty alluded to by the petitioners provides that the possession of 600 acres of the tract of land thereby agreed to be sold, shall, on the payment of a certain sum, be immediately surrendered to the state, but no payment shall be made for the residue of the tract, nor possession thereof yielded, until the chiefs of the Indians, or a majority of them, shall signify to the person administering the government, their readiness to remove to Green-Bay.

As it does not appear that there has been any encroachment on the right of the Indians to possess and enjoy that portion of the land [No. 296.]

which would be affected by the passage of the law prayed for, or or that the terms of the treaty will in the least degree change the relations heretofore existing between them and the government of this state, until the happening of the event provided for. The committee have therefore deemed it unwise to recommend the alteration of the law of the last session, as requested by the petitioners, and have instructed their chairman to ask leave to introduce the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted.

IN SENATE,

March 19, 1830.

MEMORIAL

Of the Professors of Rutgers Medical Faculty (Manhattan College) in the city of New-York, in refutation of an attack upon them by the College of Physicians and Surgeons in the city of New-York.

To the Honorable the Legislature of the State of New-York, in Senate and Assembly convened.

The College of Physicians and Surgeons of this city apply to your honorable body, against granting a charter to the undersigned; and our opponents allege against us in substance, that if we obtain a charter, we will break down their institution. It is clear however, that we can not effect this result, unless by evincing greater merit; and shall the Legislature discourage the greater for the sake of favoring the less. Such is not the course of the enlightened patrons of science or industry in any thing else; it is also at variance with the justice which the free citizens of this community have a right to expect from their representatives.

We have no compulsory process to bring students to our lectures; we have no bonus to offer them of degrees from the Regents, which shall be a license to practice. One thing only have we to offer them for their fees and attendance; it is knowledge, which under every disadvantage, they come to find in our institution. The complainants against us, also make it an accusation that we put the expenses of education at our institution, as high as at their own; which shews, at least, that we do not seek to take a mean advantage, or

to found success upon aught but merit. In those circumstances we humbly submit that impartiality is most becoming the Legislature, and that it should not raise impediments to the free choice of students, assailing their rights and our industry together, with the intent of constraining scholars, against their judgment, to resort to teachers, whom they do not voluntarily prefer. If we have committed a fault, our opponents are unable to profit by it ; so they pray the Legislature to punish us for our prosperous attainments.

Say they " the number of students in this city is not adequate to support two schools," but we would remind those gentlemen, that a faculty of physic existed formerly in Columbia college, and that for a great number of years it monopolized the whole medical education of the city ; yet it never flourished. We know that one of its most important and popular courses, had at one time, but seven students ; that the whole number never exceeded sixty-four, and never reached so high but once. During the existence of this faculty, and in despite of its opposition, the College of Physicians was chartered, and the new school in no very long time, counted two hundred.

The number of medical students resorting to a seminary of medical education, is not founded on the population of the place, but on the reputation of the school and the liberal principles by which it is governed. Edinburgh has from seven to eight hundred students of medicine, and a population less than that of New-York ; but it has celebrated professors, none are oppressed by superior authority, and they draw students from all parts of Europe and America. Within four hour's ride, is the University of Glasgow, and they both prosper, notwithstanding their proximity ; but Glasgow has renowned professors likewise, and a class of between three and four hundred students of medicine ; nor is there any attempt made in Scotland to depress one school in order to elevate the other. They are left to prosecute their separate interests, as is the case in other pursuits, by serviceable exertion and superiority of talent.

In Paris there are several schools of medicine : every hospital is one, provided with a set of professors. They teach, and such students attend them as please. The professor of greatest reputation has the largest class ; the dull or incompetent would have few hearers. When the student has completed his studies he gets an examination before a body of physicians, called the Faculty of Paris, and a diploma is the reward of his proficiency.

Similar to this, is the practice of the most-celebrated school of medicine in Germany, that of Berlin. It has more than twenty professors of medicine, any of whom, the student may attend at his pleasure, and with the certificates of those attended, he obtains an examination from the faculty of Berlin, and a diploma or not, according to his deserts. Thus there is emulation between the professors, but no hostility between the schools. In Philadelphia, with a smaller population than New-York, there are near six hundred students of medicine attending its two schools, the University and Jefferson College; but the constituted authorities do not oppress one to favor the other.

When Jefferson college applied for a charter, it was violently opposed by the University, as we are here, and through the same selfish motive; but the Legislature of Pennsylvania granted the charter notwithstanding, and medical education in Philadelphia has been the better for it.

Our opponents complain that their incomes are small, and ask the Legislature to act against our institution, that they may be enabled to make larger profits. They must have great reliance upon their influence in the legislature, when they hope to enlist it as a party to their personal interests. In default of this measure they threaten your honorable body, with a demand for legislative aid to make up deficiencies. Happy they who have such excellent friends and bountiful patrons! As for us, we assure you we shall make no call for pecuniary assistance, satisfied that upon an equal footing, we and they would have precisely all the remuneration we deserved.

The effects of a fair competition between the colleges in this city has not yet been tried. One of them has been fostered indeed, by the Regents and the Legislature, and yet with all this nursing, it does not greatly thrive. The other has suffered under the heavy hands of both; but yet there is something within it which maintains it still. With only a clear stage and no favor, it might yet entitle itself to the approbation of those eminent bodies. After four years of exclusive favor to the College of Physicians and Surgeons, of Barclay-street, it comes forward now, for an increase of the tariff. Such are the blessings which the exclusive system showers upon its supporters, and we trust your honorable body will entertain a just sense of their value and importance.

Our opponents object to us that we fill the office of professors, in the schools which we established. Would they have us erect it at our expense to hand it to them for their emoluments. We were professors in the College of Physicians, and give lectures now, as when we were members of that body. We began by investing twenty-five thousand dollars in a college edifice, and, acting like other discreet persons, we keep the control of our own estate; although we devote it to public use. In this manner banks, turnpikes, insurance companies, &c. are private property and public benefits.

They require that the offices in the Rutgers Medical Faculty shall be open to the competition of all the scientific men of the country: so they are, as often as there are vacancies; but we do not suffer favoritism to fill them.

Trustees of a college may, from private friendship, appoint mediocrity to professorships, and seek to enrich it by monopolies; but individual interest is not so generous. When your memorialists had first a vacancy in their body, they appointed to it the most able professor they could find; for they well knew that their individual interest was increased or lessened by the reputation of their school and the ability of its teachers. No trustees could say as much. When a vacancy occurred a second time in their body, they followed the same course. *To the most worthy*, was their rule of selection, without distinction of place or country, justly considering the republic of letters as extending to and embracing all enlightened nations.

The last effort of our opponents, is to bring up the futile and often confuted accusation concerning the debts of the College of Physicians and Surgeons, in the hope, perhaps, that as the members of the Legislature often change, there may be found some one among them unacquainted with that matter, and who may be deluded by the hardihood of the charge. To this we simply say at present, that any inculpation of the former professors, is unfounded, is untrue. And to prove this, our task is easy: we refer to the journals of the House, where will be found, the report of Messrs. S. Van Rensselaer, general Tallmadge, and Mr. Marcy, who investigated the subject, and attest that no charge could be brought against those professors.* In its necessities they lent money to the college;

* See further, the reports of the Regents themselves, besides the lucid document of their committee.

because they would be the most lenient creditors, and they left the college because, with other vexations, they were subjected to an arbitrary taxation, which was tantamount to a confiscation of their debt.

We humbly solicit a consideration of the premises, and that your honorable body will adopt that rule of free exertion which is now universally admitted to be the most conducive to improvement in every useful pursuit.

We have not the least objection to the Regents having a superintending inspection over the teaching part of our establishment, in common with other institutions of the state.

All which is respectfully submitted,

DAVID HOSACK,
WM. JS. MACNEVEN,
VALENTINE MOTT,
JOHN W. FRANCIS.

City of New-York, March 16, 1830.

IN ASSEMBLY,

March 11, 1830.

REPORT

Of the Select Committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York, relative to a certain street in said city.

Mr. Cargill, from the select committee, to which was referred the memorial of the mayor, aldermen and commonalty of the city of New-York,

REPORTED :

That they have duly considered the subject matter referred to them; from which it appears that the street in said city, known by the name of Stuyvesant-street, has long been used as a public thoroughfare, and was laid out originally by Mr. Peter Stuyvesant, deceased, through his own ground, running from the Bowery to the East river, in the eleventh ward of the said city. That although the same is a private street on private property, the memorialists are willing to have the same declared by law to be a public street, and vested in them for the use of the public: and are willing, in that case, to cause the same to be regulated and paved at the public expense, as in case of other streets.

The committee are of opinion that the prayer of the memorialists is reasonable and ought to be granted; and have therefore prepared a bill, and ask leave to introduce the same.

IN ASSEMBLY,

March 20, 1830.

REMONSTRANCE

Of the United Society, called Shakers, against the
passage of a certain law.

To the Honorable the Legislature of the State of New-York.

The memorial of the undersigned committee of the united society,
called Shakers,

RESPECTFULLY SHOWETH—

That it appears from the reported proceedings of the Legislature, that notice has been given of an intention to bring in a bill predicated upon the following propositions; "1. To subject the property and effects of the society called Shakers, to judgments and executions against any individual member of the society. 2. Prohibiting the society from taking and appropriating to its use, all the property and effects of fanatical fathers, thus leaving their wives and children destitute of the means of support. 3. Guarding more effectually against their evasion of our militia laws."

Considering these propositions not only entirely needless, as they respect the supposed grounds of complaint, and considering that laws made for the purposes therein stated, would be an unconstitutional and unjust infringement of the civil and religious rights and privileges of this society, we feel constrained to object against the passage of such laws.

That propositions so much at war with every principle pertaining to the free institutions of our state and nation, should be officially brought forward in this enlightened age, and in this favored land, so highly honored and extolled for its liberal and just principles, appears to us truly extraordinary ; and it is difficult for us to believe that the enlightened Legislature of this state can be brought to give any countenance to such proceedings. But believing that most of the members of the Legislature are personally unacquainted with this society, and being well aware that its enemies are busily employed in collecting and introducing false and slanderous reports against it, with a view to get a bill passed under which they can shield their injustice and give greater scope to their schemes of opposition, we feel it a duty which we owe to ourselves and to the Legislature, to give a plain and simple statement of facts, and show the absolute injustice and inconsistency of such propositions.

The bill not having been brought forward, we cannot remonstrate against its provisions ; but as it is doubtless designed to be based on these propositions, we shall take the liberty to remonstrate against the principles implied in them.

1. The first proposition is nothing short of authorising the seizure of the property belonging to the society called Shakers, on account of judgments and executions obtained against any person who may belong to this community. We deny that there is, or ever has been the least necessity for such a law. No person has ever been defrauded of his property by this society ; nor has there ever been any unjust or illegal covering or withholding of property from any individual whatever. It is a well known and established principle of the community, that any person who wishes to become a member, must satisfy all just and legal claims, as far as it is in his power, before he can be admitted into full communion with the society. This is well known by all who are acquainted with the society and its principles. The injustice therefore, lies entirely on the side of those who desire to obtain property to which they have no just nor legal right. It is also well known that reports have been frequently and industriously circulated which are calculated to induce a belief that property to a large amount has been brought in and given up to this institution, by persons who came in destitute of property.

But according to the above proposition, (if we rightly comprehend its import,) should any person become a religious member of this in-

stitution, and happen to be involved in a debt which was beyond his power to discharge, or should unfortunately have claims brought against him, on which judgment should be obtained, though he had never contributed a cent to the institution ; yet the property of any of its members must be made liable to satisfy the demand ! Can any thing be more preposterous, or more contrary to the principles of civil and religious liberty ? It is to be considered that this society consists of several hundred people, living in different families, disconnected from each other in temporal property ; some holding private property, and others having a specified right to the united and consecrated property, according to contract. We would therefore ask, upon what principle of law or justice can the property of such a society be seized on account of a claim upon an individual, though he may be a member of the society ? Or where is the justice of prosecuting any member of a society so situated, in behalf of said society, any more than in behalf of any other religious institution ?

It is a well known fact that there are many other religious and civil institutions in this state, which possess more consecrated or joint property than is possessed by all the societies of our denomination in the state. Why not enact laws making the property of such societies liable for all the claims that might be brought against any individual who belongs to any of them ? It is also well known that the indigent members of various other denominations are often relieved by the charitable distributions of this institution. Others are provided for at the public expense. Would it not therefore be more just and equitable to enact a law making the church property of such denominations liable for the maintenance of their own indigent members, than to pass such a law as is proposed against this society, whose members are never chargeable to the public, and who, in addition to the expense of supporting their own poor, pay their equal proportion of the poor rates ? But it would seem, that while the Legislature is frequently called upon to make laws for the protection and security of the property of other societies, they are at the same time called upon to pass laws calculated to destroy all security in respect to the property of this proscribed, yet acknowledged inoffensive people !

The above mentioned proposition is evidently a direct violation of the constitution of the United States and of this state. Such persons as unite with this society, are not induced by fraud nor flattery ; but do it according to their own free and unbiassed judgment,

and in the exercise of their civil and religious rights, guaranteed by the liberal institutions of our land. According to their own voluntary choice, they enter into a contract with the society, either religious or civil, or both; and such contracts are perfectly constitutional, and in full conformity with all the just and equitable laws of the land. If it be only a religious contract, it gives no more right to the consecrated property of this institution, or to the property of any member thereof, than is given by a similar contract in any other society. Can it be denied that the members of this institution have as just and constitutional a right to consecrate property to religious and charitable purposes as the members of any other society? And are not such consecrations equally valid?

But if the contract be concerning temporal property, such contract is invariably made consistent with justice and equity, and in conformity with constitutional rights. Such contracts therefore are valid to all intents and purposes, and cannot constitutionally be impaired by any law of the state. It is declared in the constitution of the United States, (Art. I. sec. 10,) that "no state shall pass any law impairing the obligation of contracts." The weakest capacity may see that such laws as are proposed, would be a direct violation of this provision. And such laws would not only impair, but entirely disannul the obligation of its contracts in this society. And they would equally violate the constitution of this state, which declares, "that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state, to all mankind. (Art. vii. sec. 3.) It is doubtless solely on account of the religious profession and worship of the members of this society, that such laws are proposed; otherwise our adversaries would not require any other laws than the general law of the state, which are alike applicable to all societies. But as there are no such laws respecting other societies, it is in vain to pretend that such would not in fact be laws of *discrimination* and *preference*.

2. The second proposition is ushered in under the pretence of "prohibiting the society from taking and appropriating to its use, all the property and effects of fanatical fathers; thus leaving their wives and children destitute of the means of support."

From the prominent features of this proposition, it is obviously designed to make an impression on the minds of the legislature by

insinuating [that through the influence of this society, frequent and palpable injustice has been done to wives and children in this respect. For no person could suppose that one or two instances of this kind, during the many years that this society has been established, would justify a call for such a proposition. Yet what is the fact? We challenge our adversaries to prove that there has ever been a single instance of the kind since the society existed. The charge is a false and unmerited stigma. It is an established principle of the society that no husband and wife shall separate except by mutual agreement; unless the conduct of the unbeliever be such that a separation can be fully justified by the laws of God and man. Nor is any man ever admitted into this community who leaves his wife and children, except in conformity to this principle. It is also an established principle of the society, in all practical cases, to allow children an equal portion of their parental estate, if their parents have any, whether such children unite with their parents and continue with the society or not. And no person is permitted to give up his property to the society until he has first settled all just and equitable claims of creditors and filial heirs; so that whatever property he may possess, shall be justly his own. And we know of no instance in which this principle has been violated, unless it has been done in giving more to the unbelieving than to the believing heir. These things are well known to all who are acquainted with the practices of this society. Yet we frequently hear of instances of husbands and fathers in other communities abandoning their wives and children to penury and suffering, or of rejecting and disinheriting them, at their own option, and frequently for no other cause than their having *joined the Shakers*. And these things have often occurred among the initiated members of other religious societies; yet no discriminating laws are called for, against the religious society to which such graceless fathers belong. The whole society is not made accountable, in those cases, for the misconduct of an individual member.

Thus it appears that general laws are considered sufficient for all other religious societies, while the society called Shakers, are to be restrained by laws of discrimination.

Great clamors have been raised, and many objections made against consecrating property to this society. But do the objectors not know that the first foundation of the christian church was based upon a united and consecrated interest? Do they not know that it is an increasing practice, at this day, to consecrate property to reli-

gious and charitable purposes? How often do we read in the public prints, of thousands and tens of thousands of dollars accumulated and consecrated to other societies of almost every name? and yet no law is called for, nor thought of, to prohibit donations and collections for such societies. If any individual abuses happen in regard to these operations, the general laws are deemed sufficient to correct them. And are the Shakers alone to be restrained in the free exercise of their own faith and conscience in disposing of their property for religious and charitable purposes, because individuals joining are accused of abuses which are not yet proved? We confidently assert that no person whatever has ever been defrauded or wronged by any donations made to this institution. What need then of discriminating laws? It is a mistaken idea that any person is required to give up all, or even any part of his property, in order to become a member of this society. The dedication of property is a privilege allowed as a matter of free choice and not of compulsion; but as before observed, all just and legal claims are first to be discharged.

During a period of more than forty years, since the permanent establishment of this society, there never has been a legal claim entered by any person for the recovery of property brought into it; but all claims of that nature have been amicably settled to the satisfaction of the parties concerned. Complaints of this nature do not come from persons who have brought property into the society; but from those who came without property, and who, after bringing a heavy burden upon the society, have had the assurance to make demands upon the property of the society to which they never had any just claim. These are positive and undeniable facts. While on the other hand, it seems to be a prevailing principle with many, that if any person joins the Shakers, he must be deprived of his property, if possible, lest it should fall into the hands of the Shakers! Many instances have occurred within our knowledge, in which unbelieving parents have disinherited their own sons and daughters, because they had joined this society; yet these disinherited children have patiently submitted to the injustice. Notwithstanding these facts, the society must be perpetually harrassed by vexatious laws, passed in violation of their just rights, and calculated not only to deprive them of the privileges enjoyed by other religious societies, but to take from them all security in the enjoyment of the fruits of their honest industry, and the little property they can save from such unjust proceedings.

Is it not enough that we should conscientiously adhere to the christian principle, to deal justly to all, and wrong none of their property, nor deprive any one of the right of heirship? Must we still submit to be legally proscribed, and exposed to the rapacious malice of our enemies by force of unjust laws? Must we be deprived of the common rights enjoyed by other citizens? the right to dispose of our own property according to our own free wills? of the right of pursuing happiness in the way which we have conscientiously chosen? and deprived too, of these rights by laws of discrimination? laws calculated in their very nature to open upon us the flood-gates of persecution? to expose us to the malicious insults; and abuses of prejudice, envy and bigotry? to the legal prosecutions of every knave that chooses to make a demand upon us for our property? Witness the laws already on the statute books, to seize the property of the society for the military delinquency of individuals, and to deprive parents of the right to dispose of their own children. But are such laws just? are they constitutional? are they agreeable to the boasted liberality of the civil and religious institutions of our country? and are they still to remain as blots upon the statute books of this great state?

This proposition is evidently based upon a supposition taken for granted, that fathers joining this society are fanatics. Is it not surprising that such ground as this should be taken, at this day, in the legislative assembly of the free state of New-York? This is the very ground which has been taken by religious persecutors in every age since persecution has been practiced under the christian name. Does not this look as though the era of persecution was dawning anew upon this hitherto free country? Is it not, therefore, time for every lover of religious freedom to be alarmed? What did the papal inquisition more than to confiscate the property and disfranchise incurable fanatics of their rights, and commit their bodies to the flames? It would indeed appear that this proposition falls little short of what persecutors have ever done, in any age, to reputed fanatics; excepting it does not, as yet, extend to taking life; but it takes that which is next to life, the civil and religious rights and property of the subject. It is obvious, that if such a bill should be passed, the people called Shakers would thereby virtually be declared fanatics by law. But who are these fanatical fathers? Are they not the genuine descendants of the fathers of the revolution, who under the oppressive acts of the British parliament, presumed to think and act for themselves in matters of conscience? And because these sons

of theirs have taken the liberty to follow the example of their fathers, in acting for themselves, they must be proscribed as fanatics and outlaws, and unworthy of the protection of that constitution which their fathers framed !

But where is the tribunal to decide who are fanatics ? whether the people called Shakers, or their adversaries ? Neither the constitution of the United States, nor of this state, has provided for any such tribunal ; nor has either of them declared one sect more fanatical than another. But they indiscriminately protect all peaceable citizens, Mahometans and Atheists not excepted. And is a man more deserving of being declared fanatical, and to be disfranchised, because he is a peaceable Shaker, than a Mahometan or an Atheist ?

3. We now come to the third proposition. The professed object of this proposition is, " to guard more effectually against the evasion of the militia laws by the members of this society." It seems difficult to conceive what further discriminating laws can be asked for, against this society, than those already in existence. We claim the right secured to us by the constitution of the United States, to become citizens of any state we choose ; and having done this, according to the laws of such states, we are legally entitled to all the privileges and immunities thereof ; and no law can constitutionally impede or hinder us. [See art. iv. sec. 2.]

Admitting there are any evasions of the militia laws, by the members of this society,—are there no evasions made by the members of any other society ? Undoubtedly there are, and that too by members of societies vastly more numerous than that of the Shakers, and who hold much more property, both jointly and individually. Why then not pass a law making the property of every other society liable for the militia fines of any member thereof ? There is already a law in the Revised Statutes, authorising the seizure of the property of any society or family of Shakers, to satisfy the militia fines against any member thereof. The members of the society of Friends are known to be far more numerous than those of our society ; and they equally refuse, from principles of conscience, to pay military requisitions. And yet there is no law making their joint property liable to satisfy the delinquency of any of their members, even in case such delinquents possess no private property of their own. No property among them is liable, except such as belongs individually to the delinquents. But as the law now stands respecting the members of our society, any goods and chattels found among them,

whether holden in a united capacity or possessed by individuals, are made liable for the delinquency of any individual who may be a member, whether such individual has ever contributed any thing to the property of the society or not. But where is the justice or constitutionality of such laws?

Since there are no such laws for any other society, does it not appear evident, that these laws are purposely designed to make a discrimination on account of religious profession? Who then can deny that they are a direct violation of the before mentioned article in the constitution of this state? It is in vain to contend that the qualifications of this section apply to this society any more than to any other. Every member of this community, either holds his own property, or has entered into a contract respecting his property and services, according to the principles of the constitution and laws of the land. There is therefore no principle of the constitution, or any constitutional law by which the property of this society can be made any more liable, in such cases, than the property of any other society or company in the state, without impairing the obligation of contracts, and thus violating the constitution of the United States.

It may not be improper here to remark that the sums of money now legally due to members of this society, for military pensions and services during the revolutionary war, amount to more than \$10,000, besides many hundreds of acres of military bounty lands, the annual interest of which would far exceed in amount all the militia fines the law could impose upon us; all which has been relinquished for conscience' sake, as being the price of blood. This we should suppose might satisfy any reasonable person of our conscientious feelings on this subject. It seems however that these things are not enough; but we must be perpetually harrassed with vexatious laws to rob us of our consecrated property; because we cannot in conscience learn the horrid art of shedding human blood!

But we cannot persuade ourselves that the Legislature will judge that any proceedings in support of this proposition can be necessary: for it would appear very extraordinary if, while other states of the union are either ameliorating the rigour of their militia laws, or wholly abolishing the system, the Legislature of the great and professedly liberal state of New-York should think it necessary to increase the rigour of their militia laws against a society so small as scarcely to be considered a unit in the state, when her laws are al-

ready more rigorous and oppressive towards this society than those of any other state in the Union. We should suppose that the present discriminating and oppressive laws might be fully sufficient for the purpose, and they ought to satisfy even our enemies.

We have now given a plain statement of facts, and of the impressions we feel on the subject of these propositions. We shrink not from investigation, but are ready to substantiate the facts we have stated; and we appeal to the justice and good sense of the members of the Legislature, and confidently trust in the belief that that honorable body, will not legislate upon the subject without investigation. Our accusers well know that they have no fair ground of action in a court of law and equity. It appears therefore that they have, in secret conclave, adopted a plan, which they have urged some of the members to bring forward in the hurry of legislative business, and probably calculating that the distant members are generally unacquainted with this society, and will therefore be the more easily influenced by their false charges and slanderous reports, to sanction a bill in favor of their unjust and persecuting schemes. But we readily submit the subject to a fair investigation before the proper authorities, trusting in the justice of our cause and the goodness of an all-wise Providence, humbly hoping that the malicious designs of our enemies may be defeated by the wisdom of an enlightened Legislature, and that a final stop may be put to their vexatious proceedings by the frowning voice of Justice.

**CALVIN GREEN,
GARRET K. LAWRENCE,
FREDERICK S. WICKER,**

**Committee in behalf of the united societies, called Shakers,
of New-Lebanon and Watervliet.**

IN ASSEMBLY,

March 20, 1830.

ANNUAL REPORT

Of the Brooklyn Savings Bank.

Pursuant to the act incorporating the Brooklyn Savings Bank, the Managers beg leave to present their third annual report, as follows:

They have received during the period from the 1st of January to the 31st of December, 1829, from 370 depositors, the sum of \$14,084.74, viz:

In January, from 27 depositors,.....	\$826.00
February, " 21 "	462.00
March, " 23 "	869.00
April, " 22 "	683.50
May, " 37 "	2,109.00
June, " 63 "	3,926.74
July, " 35 "	651.00
August, " 24 "	862.00
September, " 32 "	913.50
October, " 23 "	715.00
November, " 29 "	990.00
December, " 33 "	1,077.00

370 depositors. \$14,084.74

of which 92 are new accounts, and 278 re-deposits.

The sum of \$8,102.21 has been paid to 128 depositors, 47 of whose accounts are closed.

The sum of \$13,851.56 is invested in stocks, and \$11,968.90 cash uninvested, as will appear by the treasurer's account, herewith.

The deposits have been made by persons of the following occupations and descriptions :

Bakers,.....	2	Mantumaker,.....	1
Blacksmith,.....	1	Merchant,.....	1
Bookbinders,.....	3	Ministers,.....	2
Boarding-house keeper,	1	Miller,.....	1
Carpenters,.....	8	Nurses,.....	2
Chandler,.....	1	Ostler,.....	1
Chambermaids,.....	2	Painters,.....	4
Cooks,.....	5	Pewterers,.....	2
Coachmaker,.....	1	Porters,.....	2
Dressmakers,.....	4	Physician,.....	1
Distillers,.....	4	Ropemaker,.....	1
Farmers,.....	12	Sawyer,.....	1
Ferry master,.....	1	Servants,.....	15
Female teacher,.....	1	Seamstresses,	3
Fishermen,.....	2	Storekeeper,.....	1
Glassblowers,.....	2	Shoemakers,.....	3
Hatters,.....	2	Stonecutters,.....	4
Hat trimmer,.....	1	Scouser,.....	1
Housekeepers,.....	2	Tailoresses,.....	4
Laborers,.....	37	Tavernkeepers,.....	2
Mapmaker,.....	1	Teacher,.....	1
Market-man,.....	1	Turner,.....	1
Do. woman,.....	1	United States army,.....	3
Minor males,.....	7	Trust accounts,.....	30
Do. females,.....	6		

And the deposits were made in the following sums :

From \$1 to 5,.....	95	Brought forward,....	
5 " 10,.....	42	From \$80 to 90,.....	3
10 " 20,.....	55	90 " 100,.....	1
20 " 30,.....	46	100 " 200,.....	23
30 " 40,.....	33	200 " 300,.....	12
40 " 50,.....	31	300 " 400,.....	1
50 " 60,.....	15	500 " 600,.....	1
60 " 70,.....	6	700 " 800,.....	1
70 " 80,.....	5		
Carried forward,...	—		370

A. V. SINDEREN, *Pres't.*

JAMES S. CLARK, *Sec'y.*
Brooklyn, January 28, 1830.

in Cr.

.....	\$11,961 98
.....	826 33
.....	
.....	462 00
.....	869 00
.....	683 50
.....	2,109 00
.....	\$58 87
54	3,926 93
.....	\$19 80
02	58 87
00	
.....	650 54
.....	
.....	862 00
.....	913 50
.....	705 00
.....	69 37
.....	
.....	990 06
.....	\$12 50
56	1,077 08
.....	\$ 69 37
.....	261 99
.....	
050 77	4,550 77
.....	
.....	\$30,587 69
.....	
.....	\$11,968 90

RVEER,
Treasurer.

IN ASSEMBLY,

March 11, 1830.

REPORT

Of the Committee on Colleges, Academies and Common Schools, on the petition of sundry inhabitants of the town of Mooers.

Mr. Bradish, from the committee on colleges, academies and common schools, to which was referred the petition of the inhabitants of the town of Mooers, in the county of Clinton,

REPORTED—

That the petitioners in this case set forth that the board of supervisors of the said county, at their annual meeting in October 1828, abolished the distinction between town and county poor: That there was, at that time, in the hands of the overseers of the poor of said town, the sum of three hundred and thirty-five dollars of poor monies, which, not being required for the support of the poor, were loaned out by the said overseers, in small sums on interest. That these monies have not yet been collected and paid into the county treasury, according to the provisions of title one of chapter twenty of the first part of the Revised Statutes. The petitioners, therefore, pray the passage of a special act authorising the overseers of the poor of said town, to collect and pay over to the commissioners of common schools thereof, the said three hundred and thirty-five dollars of poor monies, with the interest thereon, to be by the said commissioners loaned out on landed security, and the interest applied annually, in the same manner as other school monies, for the support of common schools in said town.

Your committee, upon an examination of this subject, are unanimously of opinion that it is embraced, and fully provided for in the general act, entitled "An act relative to monies in the hands of overseers of the poor," passed April 27, 1829; and, therefore, that no special or further legislative act is necessary fully to accomplish the wishes of the petitioners in this case.

Your committee have therefore directed their chairman to submit and recommend the adoption of the following resolution :

Resolved, That the petitioners have leave to withdraw their petition.

IN SENATE,

March 20, 1830.

REPORT

Of the Committee on Literature, on the petition of the Trustees of Hamilton Academy, &c.

Mr. Maynard, from the committee on Literature, to whom was referred the petitions from the trustees of Hamilton Academy, in the county of Madison, the Oneida Institute, Whitesboro' Academy, and Utica Academy, in the county of Oneida,

REPORTED AS FOLLOWS, TO WIT:

That the petitioners complain of the rule now established by law, for the distribution of the income of the literature fund, and pray for the enactment of a law, which shall secure to "all sections of the state equal and impartial benefits from the literature fund."

The respectability of the petitioners, and the nature and important character of the complaint, demanded from your committee a full investigation of the subject. Until the present year, the income of the literature fund has been distributed among the several academies of the state, subject to the visitation of the Regents of the University, in proportion to the number of classical scholars instructed in each.

Now, the Regents are required to assign an equal portion of the amount to be distributed to each senate district, and to divide that portion in the same manner among the several academies in each district. If the number of classical scholars instructed in academies in each district was the same, the rule of distribution would be, in all respects, equal and impartial. The complaints are preferred because there is a less number of such scholars in some districts than

in others. If the literature fund were the property of the academies, and they had acquired vested interests in its income, there would be just cause for their complaints, and the prayer for an alteration of the rule of distribution would be reasonable. But your committee believe that is a partial and imperfect view of the case.

From the report of the Regents of the University, made in obedience to a resolution of the Senate, it appears that the amount distributed by the Regents among the several academies, from the year 1823 to the year 1830, inclusive, is \$57,683.39; of which sum, the first district has received \$5,701.38; the second, \$6,787.47; the third, \$11,880.31; the fourth, \$5,657.03; the fifth, \$9,107.64; the sixth, \$7,961.05; the seventh, \$6,940.23; the eighth \$3,648.28. And of the sum distributed, the amount to which New-York, upon the ratio of population would have been entitled to claim, would have been more than \$5,700, yet that city has received not a cent. The average of the sum distributed to each district, would have been \$7,219.42; consequently, three districts, the third, fifth and sixth, have received a sum above, and the other five an amount below, the average. By the present rule of distribution, therefore, those three districts loose, and the other five gain, and the first and eighth gain most largely, and the third and fifth districts are principal sufferers.

It cannot escape observation, that in consequence of the generous forbearance of the city of New-York to claim her share of the income of this fund, or her disinclination to place her institutions in a situation to receive it, the other parts of the state have enjoyed an increased proportion, which they had no right to expect. The diminution in the amount received by individual academies, has not been produced solely by the establishment of a new rule of distribution, but is, in part, attributable to the multiplication of institutions entitled to a participation. In 1823, the number of academies was thirty-six, and is now fifty-five; and the number has increased in every district except the first. In the former year, there was but one in the eighth district; there are now five, and probably more will come into existence in that part of the state.

One of the petitions referred to your committee sets forth, that the institution in whose behalf it is presented, was founded and has hitherto been sustained, in reliance upon its proportion of the income of the literature fund, and contains an intimation that it would

be unjust to diminish that proportion by a new rule of distribution. That academy has been in existence more than eight years, and your committee cannot perceive that any reliance could have been placed upon that fund, except as it then existed. There was no promise on the part of the state, express or implied, to augment the fund, or not to increase the number of academies. But in 1827, the Legislature did add one hundred and fifty thousand to the fund, and notwithstanding the increase of academies, the institution that prefers the complaint has received this year, under the new rule of distribution, a larger sum than in 1827, before the augmentation of the fund. If, therefore, the statement and reasoning of the petitioners were correct, their expectations at the founding of their institution, have not, in this particular, experienced disappointment.

The other petitioners remind the Legislature of the rule of distribution of the income of the common school fund, and seem to suppose that a rule equally equitable in relation to the literature fund, has been violated by the adoption of the present, and ought to be restored. The petitioners seem not to have called to their recollection, that common school monies are distributed in proportion to the number of those who *might be*, and not those who *actually are*, partakers of its benefits, and that New-York receives her share in the ratio of population. The income of that fund is distributed to all the children between the ages of five and sixteen, whether they attend school or not; the income of the literature fund was distributed only to classical scholars, who were actually instructed in academies, and New-York received nothing. Give to New-York her proportion of the income of the literature fund, and divide the residue in proportion to all the youth of the country, between certain ages, and the petitioners would not gain, but would lose by the alteration. If the former mode of distribution were restored, and New-York were to receive her rateable share, the result would not be essentially variant from the one produced by the present rule, while the academies in the third and fifth districts would be liable to suffer a diminution of their receipts, by the increase of academies and scholars in the other districts. From the fact, that New-York has not partaken in the benefits of the literature fund, the old academies of the state have enjoyed a share far greater than "equal and exact justice to every section of the state" would have awarded them, and which the old mode of distribution was not calculated to secure to them. While, therefore, the new rule of distribution diminishes their receipts for the present, it affords them protection against a

much larger diminution, which they might have experienced from the operation of the rule formerly established.

If the literature fund be regarded as the property of academies, there would be another difficulty in producing perfect equality in the distribution of its benefits. Several academies have shared largely in the public bounty, by specific grants from the Legislature. Equity would require that those grants should be deemed as belonging to the literature fund, and a just allowance for their annual income, charged to those institutions respectively, in the annual distributions. This would be difficult, and would cause displeasure and vexation.

Your committee are induced to regard the literature fund as belonging to the people of the state, created from their common funds, and intended for the equal benefit of every part of the state, and that the rule now established, is designed to effect the purposes of its creation.

From the operation of this rule, it is true one academy in the first district has this year received a disproportionate and unreasonable amount. But that inequality can be corrected, by entitling some of the valuable institutions in the city of New-York, to a share in the portion allotted to that district. Your committee cannot perceive why the city of New-York should not partake in the product of this common fund.

Estimating contribution to the fund by the ratio of wealth, and taking the valuation as the standard, and making contribution the rule of distribution, that city would be entitled to more than one-third of the whole income of the fund. Making population the rule of distribution, as in the case of the common school money, and her share would be one-tenth. That city abounds in institutions eleemosynary, humane and literary, some of which annually implore for Legislative aid.

The proportion of this fund fairly belonging to that city, would afford material assistance to some of her valuable institutions now struggling to sustain themselves, and cramped in their exertions for the want of pecuniary means.

Although the committee have come to the conclusion that they cannot report in favor of granting the prayer of the petitioners, they have been led to inquire further, whether the present mode of ap-

plying the income of the literature fund, was well adapted to effect the purpose for which that fund was created. Its object is to promote literature, and the attainment of that object has hitherto been sought solely by distributing its proceeds among the academies of the state. The aid thus afforded them has been materially beneficial, especially in their infancy. The number of academies is perhaps nearly sufficient. Within a few years other schools different in organization and character, but similar in general purpose, have arisen, and are flourishing under the influence of popular favor. Some particular sciences have acquired also, an increased interest and importance. Chemistry has been found useful for many purposes of business. Indeed a knowledge of it is indispensable to a near approach to perfection in many of our most valuable and important manufactures.

It has occurred to your committee whether a greater impulse could not be given to improvement in some of the more essential branches of science, by enabling the Regents of the University to apply a part of the income of the fund in supporting able professors, who should deliver lectures and impart instruction in the academies, under regulations to be so devised as to secure equal benefits to every part of the state, and in supplying the academies with necessary and useful apparatus.

On a subject so important to the interests of the community, and the academies especially, your committee would not come to a conclusion, without seeking for more light than they now possess.—And the disposition they propose to make of it, induces them to refrain from further discussion. In order that the subject may be maturely considered by those most competent to give a full view of it, your committee offer for adoption, the following resolution.

All which is respectfully submitted.

IN SENATE,

March 13, 1830.

REPORT

Of the Committee on Claims, on the petition of Gilbert D. Dillon.

The Committee on Claims, to which was referred the petition of Gilbert D. Dillon, praying for relief, in consequence of wounds received while performing his duty in a company of artillery, of the militia of this state,

REPORTED AS FOLLOWS, TO WIT :

That the petitioner, soon after the death of De Witt Clinton, late Governor of this state, was ordered by the Adjutant-General, to fire a field-piece at stated periods, and whilst engaged in the discharge of this duty, was dangerously wounded. He has severely suffered, and is still disabled by his wounds. The committee, although aware of the extreme hardship of the case, believe that they would not be warranted by precedent in granting the prayer of the petitioner ; and that the policy of granting pensions to persons injured whilst serving in the militia in time of peace, should not be adopted. Should it once be conceded by the legislature, that claims like the present would be allowed, it is believed that our tables would soon be crowded with petitions, and the expenses of the government greatly augmented. The committee offer the following resolution :

Resolved, That the petitioner have leave to withdraw his petition.

IN ASSEMBLY,

March 19, 1830.

REPORT

Of the Trustees of Union College for the year 1829.

To the Honorable the Legislature of the State of New-York.

The board of trustees of Union College respectfully report to the honorable the Legislature of the state of New-York, that the present faculty consists of the following officers, viz.

ELIPHALET NOTT, President.

ROBERT PROUDFIT, Prof. of the Greek and Latin languages.

JOEL B. NOTT, Prof. of Chemistry.

BENJAMIN F. JOSLIN, Prof. of Nat. Philosophy and Mathematics.

JOHN A. YATES, Prof. of Oriental Literature.

ISAAC W. JACKSON,
THOMAS REED,
JOHN NOTT,

} Assistant Professors.

CHESTER AVERIL,
GEORGE EATON,
JESSE W. GOODRICH,

} Fellows.

That eighty-two young gentlemen were admitted to the degree of Bachelor of Arts at the last annual commencement; that the whole number of students for the current year, has been two hundred and seventeen.

That the annual expense of a student in the institution, including board, tuition and books, is about one hundred and twelve dollars. The terms of admission, and the course of studies afterwards pursued, will appear from the printed statement accompanying this report.

That the classical library for the use of students is continued, from which, indigent students receive their books gratis. And thirty young gentlemen have been otherwise assisted, during the last year, from the fund granted by the State for that purpose.

The thirty-five thousand dollars appropriated to the permanent support of officers; the five thousand dollars for establishing a classical library, and the five thousand dollars for aiding indigent youth, arising from the lotteries, heretofore granted to Union College, has been, and continues invested according to law, which investiture constitutes a permanent fund, amounting to forty-five thousand dollars.

They have only to add, that during the last year the students of the institution, have generally, prosecuted their studies in a satisfactory manner, and have been exemplary in their conduct.

All of which is respectfully submitted in behalf of the trustees.

HENRY YATES, *Clerk.*

March, 1830.

Optics, &c..... *Biot.*
..... *Kames.*

2D TERM.

..... *Biot.*
..... *Paley.*

try.

2D TERM.

ism, Chemistry, Botany and Mine-

natural Philosophy.

[No. 306.]



Admission into Union College.

Character.

Candidates are required to furnish evidence of their good moral character, and if from another college, a regular dismissal or letter of request.

Age.

Sixteen years of age is requisite to admission: the candidate enters, however, any class for which he is qualified.

Payments.

There are three terms of study in each year, and the expense of each is paid in advance. Students, unless from another college, entering the Sophomore class, pay \$7 00; the Junior \$9 00, and the Senior \$12 00, which is the only retrospective expense incurred by entering in advance.

Guardian.

All monies intended for the use of students are required to be transmitted to the College Register, who acts as fiscal guardian in their behalf, and transmits to each parent, at the end of the term, a detailed account.

Annual Expense.

College bills, including board in the hall,.....	\$98 00
Fuel and light,	8 50
Washing,	6 00
	<hr/>
	\$112 50

Students boarding out of the hall, and students remaining in vacation, incur an additional expense for board.

The expense for clothing and pocket money, will vary according to the economy of individuals. A student who remains in vacation, may, with *strict* economy, clothe himself and pay all his other bills with less than \$200 00. A student not strictly economical, and who travels in vacation, will require from \$ to \$

CHARITY STUDENTS.

Their Annual Expense.

College Bills,.....	\$1 50
Board in the Hall,.....	36 60
	<hr/>
Carried forward,.....	

Brought forward,.....	\$	
Wood and light,.....		6 00
Washing,		6 00
Total,.....	\$	49 50

Residence.

Rooms are assigned the students in the same edifices that are occupied by the President and professors, and their respective families.

Instruction.

The Freshman class, for the most part, constitutes a department in the academy, and is taught by the principal thereof. The other three classes are divided into sections, according to attainment, or choice of studies, and the several sections are instructed by the President and professors.

Government.

The government is, for the most part, parental and preventive, and devolves on the President and resident professors. Those students who do not cheerfully submit to it, are silently dismissed. No student is allowed to visit taverns or groceries; to be out of his room at night, or go out of town at any time, without permission; nor is any society allowed to hold their meetings at night.

Exercise.

Gymnastic and other athletic exercises are encouraged, and ample grounds are furnished, free of expense, for those who prefer devoting their hours of recreation to agricultural pursuits.

Commencement.

Commencement is on the 4th Wednesday in July; after which there is a vacation of eight weeks.

Vacations.

There are two other short vacations, the one sometime in December, the other in April. The seniors have no additional vacations, nor are there any holydays. It is desirable that students should either return home, or visit their friends, during the vacations. And when parents cannot provide for this, the Faculty should be apprized of it, that provision be made for their instruction and government at college.

Merit Roll.

An accurate and daily account of the delinquencies of every student, and also, of the degree of his attainment, in conduct, scholarship and attendance, is kept, and the summing up of these items de-

termines the place of each upon the merit roll; a copy of which items is transmitted to the parent.

Examinations.

A committee is annually appointed, who examine the several classes, publicly, at the close of each term, and make a written report thereof.

IN SENATE,

March 23, 1830.

REPORT

Of the Committee on Banks, on the bill from the Assembly, to incorporate the President, Directors and Company of the Livingston County Bank.

Mr. Allen, from the committee on banks and insurance companies, to which was referred the bill from the Assembly, to incorporate the president, directors and company of the Livingston County Bank, and in obedience to the resolution of the Senate, passed March the 5th, 1830,

REPORTED AS FOLLOWS, TO WIT:

That the petitioners for this bank are numerous, and, as they state, reside in the counties of Livingston, Allegany, Cattaraugus and Genesee; all of whom are, in the opinion of the petitioners, to be accommodated by the establishment of a bank at the village of Geneseo.

The population of the town of Geneseo, as stated in the *Red Book*, is two thousand two hundred and two; and that of the county of Livingston, twenty-three thousand eight hundred and sixty.

The village of Geneseo, as the committee are informed, is very prosperous and thriving, and is situated at the head of boat navigation, on the Genesee river. Large quantities of produce from the country above, are brought there for a market, and more would be brought were the facilities of a bank afforded the merchants of the village and its vicinity: but by the want of these facilities, the merchants are cramped in their means and operations, and the pro-

duce which, under other circumstances, would be sold at the village, is removed to other places, which in this respect are more favored than they are.

There are from sixty to seventy merchants in Livingston county, (exclusive of grocers and other small traders,) who are doing a considerable business in the purchase and sale of merchandize, and who procure for that purpose a regular supply of goods from New-York, Albany and Boston; and the amount thus bought and sold is estimated at four hundred thousand dollars annually.

An estimate was made in 1824 by a gentleman, then a member of the Legislature, of the amount of produce raised and manufactured in the county of Livingston, and it amounted to more than half a million of dollars. It consisted of flour, wheat, beef, cattle, ashes, wool, pork, whiskey and coarse grain; and the committee are assured, that the quantity since that time has greatly increased.

The business of grazing is carried on to a great extent in this county. There were upwards of fourteen hundred head of cattle bought, fatted and sold, during the last year, by the farmers along the Genesee valley; and this is a business which requires considerable capital, and cannot be conducted advantageously without loans to a large amount.

There are in the county twelve flouring mills; eight of which manufacture from three to eight thousand barrels of flour annually; the others are only partially employed in flouring, and generally, in doing country work.

Two land-offices are located in the village, who annually receive considerable sums of money, and to whom a bank would be a great convenience, by affording a safe place for deposit.

The distance from the village of Geneseo, where this bank is intended to be located, to any of the present banks, is *thirty miles*; and it is estimated that, owing to this inconvenience, the persons in the county who require bank accommodations, are compelled to pay from one and a half to two and a half per cent extra interest on such loans. This inconvenience and hardship, it is contended by the applicants for the corporation, would be entirely obviated by establishing a bank in the village of Geneseo. The committee cannot but view this fact as a serious drawback upon the operations of the merchants and millers of the county, which must prevent them from

competing upon equitable terms with their neighbors of Rochester, Batavia and Canandaigua, who are favored with bank accommodations, while they are denied the privilege.

The friends of this application declare that the bank is not wanted for speculative purposes, but for what they deem a fair and legitimate banking business ; to facilitate exchange ; to anticipate capital existing in other forms than money, and not immediately or profitably convertible into cash ; and to furnish a permanent investment for money, from which the owner may wish to derive a regular and reasonable income.

The committee have been referred to the Assembly journals of 1823, 1825, 1827, 1828 and 1829, and the journals of the Senate for 1826, which show a series of years, during which the people of Livingston county have prayed the legislature to incorporate a bank in that part of the state ; and also that, although the reports of the committees to which the subject was referred, have been favorable, still they have been refused a privilege, demanded alike by the real wants of the petitioners, and by equal and exact justice.

Although the committee have full confidence in the veracity of the gentleman who has furnished them with the foregoing facts, they nevertheless deem it their duty to state, that they have no knowledge, personally, of the location or business of the place where this bank is to be situated ; and they therefore report the bill to the Senate, accompanied with all the information in their possession, and without expressing any opinion, as a committee, on the propriety or impropriety of its passage into a law.

IN ASSEMBLY,

March 11, 1830.

REPORT

Of the Select Committee, in relation to the Agricultural Society of the county of Jefferson.

Mr. Orvis, from the select committee to whom was referred the petition of members of the agricultural society of the county of Jefferson,

REPORTED :

The agricultural society of the county of Jefferson has existed since its first organization in 1818. In 1828 it was incorporated by an act of the Legislature, and is now the only one existing in the state. It awards premiums annually, to a considerable amount, on articles of agricultural growth, domestic manufacture and on animals.

The petitioners set forth, that the rearing of horses is much attended to in the county : that the value of horses in market depends much upon their speed and activity ; but, that owing to the restrictions now existing by law, it is impossible properly to test the speed of horses at home, and consequently they cannot command that price in market which they would command, could their value be known.

The soil of the county is well adapted to the growing of grains both fine and coarse ; but, in consequence of the distance from the markets of the state, those productions will not bear transportation ; so that the farmers are compelled to resort to the raising of live stock, as almost the only resource for money in the county.

This being the case, it would seem but just that every facility should be afforded to the inhabitants for improving their animals.

The petitioners ask that the agricultural society may be permitted to offer and award premiums for horses of the best speed and bottom; and that the racing of horses for such premiums, may be allowed, under proper regulations and restrictions.

Your committee have prepared a bill in accordance with the prayer of the petitioners, and ask leave to introduce the same.

IN ASSEMBLY,

March 12, 1830.

REPORT

Of the committee on Claims, on the petition of Joseph Hackney.

Mr. Van Ness, from the committee on claims, to whom was referred the petition of Joseph Hackney,

REPORTED:

That the petitioner claims bounty lands, or a compensation therefor, on account of revolutionary services. He states in his petition, that he enlisted into the army of the revolution in the fall of 1782, for three years, at the German-flatts. Soon after his enlistment, he was marched to West-Point, and attached to the regiment of New-York artillery commanded by Colonel Lamb. He was retained in service, during the period of his enlistment, and when that expired enlisted again, and was marched to Muskingum, Ohio. He continued attached to the army nearly six years after he was marched to the west, and has resided in that section of the country ever since. Having been successful in business after he left the army, and far removed from his native state, which he had left at an early age, he made no application for bounty lands, thinking them of little consequence. A change in his circumstances has brought him, in the decline of life, an applicant at your door.

These facts are proved by the oath of the petitioner, of whose respectability your committee have the most satisfactory evidence. It is known to your committee that he is now, and has been for several years, a judge of the county courts in a neighboring state. In addition to his own affidavit, he supports his claim by the evidence of William Hackney, of Canajoharie in the county of Montgomery.

This witness appeared before your committee, and was duly examined on oath. His statements confirm all the material allegations in the petition. He was also a soldier of the revolution, having enlisted at the same time and place, and served in the same company and regiment as Joseph Hackney, the petitioner. Being a during-the-war-man, he was discharged at its close, and returned home. William Hackney has received a patent for his bounty land; but Joseph Hackney has not, as is evident from the balloting book, and the testimony adduced.

Your committee believe this to be a case which there can be very little doubt as to the facts on the equity of the claim. It presents an opportunity to do justice to one, who early in life embarked in the cause of his country, and has since shown himself worthy of her confidence and regard. Your committee have prepared a bill for his relief, which they ask leave to introduce.

IN ASSEMBLY,

March 13, 1830.

REPORT

Of the Committee on Claims, on the petition of
Ezra Thorp.

Mr. P. C. Fuller, from the committee on claims, to whom was referred the petition of Ezra Thorp,

REPORTED :

The petitioner is one of that unfortunate band of sufferers, who, on the 7th of April, 1780, were captured by the celebrated chieftain Joseph Brandt, in the town of Harpersfield. The prisoners were taken to Niagara, where, the petitioner states, he was confined in irons for two years and nine months. From Niagara, he, with the other captives, were taken by way of Quebec and the Gulf of St. Lawrence, to Boston, where they were discharged.

It would seem that the petitioner, from the affidavits he presents to your committee, and which, from the respectability of the deponents, cannot reasonably be doubted, was, when captured, one of the scouting party under the command of captain Alexander Harper; who, together with Col. Peter Teely, have heretofore certified to this fact, but which certificates are not before your committee. One of the deponents, however, swears, that the petitioner was sent out on a scouting party and was captured with the witness; and this testimony is corroborated by that of another witness. Both these witnesses swear that the certificate above referred to, was given to Thorp, the petitioner, and agree as to the duration and horrors of the captivity.

Relief has been extended by the Legislature to Freegift Patchin and Isaac Patchin, captured at the same time, and, as appears to your committee, under similar circumstances: and your committee cannot discover any good reason for making a distinction between these men and the petitioner.

The committee beg leave to refer the House to various reports on this subject, which may be found in the Assembly Journal of 1812, page 197; 1814, pages 421 and 188; 1820 and 1821, page 511; 1824, page 643; 1825, page 615; 1826, page 417. Also Journals of the Senate for 1813, page 288; 1822, page 166. And also to the several acts for the relief of Isaac Patchin and Freegift Patchin.

If pain and suffering under their severest forms, can entitle men to the favorable consideration of this House, the claim of the petitioner will hardly be doubted. Viewing this claim as, in all respects, similar to that of those above mentioned, which have been recognized by previous Legislatures, the committee have prepared a bill, which they ask leave to introduce.

IN ASSEMBLY,

March 13, 1830.

REPORT

Of the Select Committee, on the memorial of the Common Council of the city of New-York, relative to the better regulation of wharves, piers and slips, in said city.

Mr. Livingston, from the select committee to which was referred the memorial of the common council of the city of New-York, praying for an act for the better regulation of wharves, piers and slips in said city,

REPORTED—

The difficulty and confusion arising from the indiscriminate use of the several wharves, piers and slips in the city of New-York, for the accommodation of vessels employed in various ways, have given rise to numerous and well founded complaints.

In addition to the difficulties complained of, your committee would suggest that dangers are to be apprehended from steam-boats lying within the same slip, or along side of vessels laden with hay, or other combustible articles.

It would, therefore, seem expedient that a law should be passed, empowering the common council to regulate the wharves that would provide not only for the safety of property, but for the better accommodation of vessels.

Believing that such power, if conferred, would be exercised with discretion, and for the general good, your committee have therefore prepared a bill for that purpose, and now ask leave to introduce the same.

IN SENATE,

March 23, 1830.

REPORT

Of the Select Committee on so much of the Acting Governor's Message as relate to accounts with the United States.

Mr. Bronson, from the select committee to whom was referred so much of his honor the Lieutenant-Governor's message as relates to the claims of this state on the United-States, for aid furnished during the late war,

REPORTED AS FOLLOWS, TO WIT :—

That a law was passed Feb. 10th, 1818, authorising the governor to appoint an agent to settle the accounts between this state and the United States, growing out of the expenditures of the late war.

Under this law several agents were appointed, the accounts were arranged, and the best vouchers obtained which the nature of the case would permit, and repeated efforts were made to procure such additional vouchers as would bring the accounts within the rules prescribed to themselves by the officers of the accounting departments of the United States.

It appears from the last report of Mr. Hammond, a state agent under the law of 1818, made to the Legislature, 14th March, 1836, that the whole amount originally claimed by the agent to be due from the United States, was,..... \$113,699 79
Of which amount has been paid to the first agent, Col.

Pell, \$132,509 60

Carried forward,.....\$

Brought forward,...		\$
Amount allowed on settlement with		
Gov. Tompkins, by United States,..	\$12,278 24	
Amount rejected vouchers,.....	54,134 80	
Withdrawn vouchers, not deemed properly allowable by the acting officers,	27,413 15	
Claims for powder,	36,021 76	
Repairs of arms,.....	28,081 27	
		<hr/>
		290,438 82
Leaving this sum, for which no vouchers have ever been in the hands of the late agents,		\$23,260 97
The amount for powder ought to be withdrawn,.....		36,021 76
The amount for repairs of arms has been charged, see report 6th April, 1825,.....		28,081 27
Allowed Gov. Tompkins,		12,278 24
		<hr/>
		\$99,642 24
		<hr/>

These several sums, together with the amount paid Col. Pell, being deducted from the original sum claimed, will leave a balance which the agent thinks equitably due to the state, of		81,547 95
To which he adds a probable balance on account of repair of arms,.....		4,000 00
		<hr/>
		\$85,547 95

Making a total amount of claims unsatisfied, according to the opinion of the agent, of \$85,547 95.		
On this sum he has computed interest to May, 1826, 13 years,.....		66,727 31
		<hr/>
Making the aggregate amount of debt and interest in May, 1826,.....		\$152,275 26
		<hr/>

It further appears from the books of the Comptroller, that the sum of \$6,615 02, was received from the United States treasurer, on the 12th day of April, 1826, which was shortly after the report alluded to above, was made by Mr. Hammond, which sum the committee presume constituted a portion of the above equitable claim, and if so, it reduces that claim to the sum of \$78,932 93.

Subsequent to the report above alluded to, the Comptroller of this state repaired to Washington, as appears by his report to the Legislature Dec. 12, 1826, and adjusted the claim of the state on the United States, for interest due on the sums of money before allowed and paid to the state agents, which sums amount to \$139,124 62. The interest allowed on the sum, was..... \$40,264 86 He also received at the same time from the general government, on claims assigned to the state by the Niagara sufferers,..... 29,934 01

Together amounting to \$70,198 87

These are all the moneys received from the United States, for war expenditures, leaving still due the state in equity, according to the opinion of the late agent, as well as that of the late Governor, the sum of \$78,932 93, together with interest thereon. The allowance and payment of this sum has been repeatedly pressed upon the accounting departments, from whose decisions an appeal has been made to two successive secretaries of war, and in both cases without success.

There remains, in the opinion of the committee, no alternative but to abandon this claim or submit it to the consideration of Congress.

To enable the Legislature better to judge of the character of the claim, the committee take leave to explain one of the numerous items which compose it, together with the decision had thereon by the war department. More than \$12,000 of this claim, is for moneys expended in the transportation of arms and other munitions of war, from the arsenals near the Hudson, to the northern and western frontiers, where they were again deposited in our arsenals, and from thence distributed to the militia, as they were assembled for the defence of our invaded frontier.

This service appears to have been contemplated and authorised by the war department, from the correspondence between the late Governor Tompkins and the secretary of war; but the accounting officer, while he admits the expenditure, rejects the payment, on the ground that the arms were removed from one arsenal to another, preparatory to war, for the accommodation of the state, and without being destined to the use of any particular corps.

The secretary of war confirms this decision, and in dismissing the subject, describes this service as a "distribution of military stores," terms improper, in the opinion of the agent and your committee, when applied to the removal of stores, a distance of 200 miles toward the frontier of our state, and in the direction of the seat of war. This service in the opinion of the committee, ought to be denominated *transportation*, either in military or common acceptation, and is that kind of service which is incident to all military operations, the expense of which should be born by that government to which belongs the defence of the country.

There also appears to be an unsettled account between the two governments, of a different character, which is alluded to in the message of the Acting Governor, as a property account.

It appears from a report made to the Acting Governor, by the Commissary-General, that this account was adjusted by the agents of the two governments, being officers of the respective ordnance departments of each, in January, 1818, and the amount due the state of New-York, of each description of military stores stated, and that several payments have since been made thereon, in kind.

The Commissary-General adds, that some time in the years 1822 and '23, "I urged the United States to come to a final settlement of this claim, with a view of procuring field ordnance for the artillery, and was then first informed by Col. Bomford, the ordnance officer at Washington," "that the accounts have recently been re-examined, and material errors discovered; that in the present state of the claim, it was considered proper to defer making further advances."

The Commissary-General was afterwards appointed by the Governor to bring this account to a final settlement, but before much progress had been made therein, the authority vested in the executive was withdrawn, by a repeal of the law of 1818; there are therefore no special agents authorised to prosecute either of these claims, and no authority exists to create such agents.

The committee present to the Senate, in explanation of, and as a part of their report, so much of the communication from Alexander M. Muir, Commissary-General, to the Acting Governor, as relates to the paper marked B, together with said paper marked B; it being an

ordnance account between the United States and the state of New-York, for issues during the late war.

And in relation to the whole subject, they propose for their consideration, the accompanying resolution.

• All which is respectfully submitted.

DOCUMENTS.

*Communication from Alexander M. Muir, Commissary-General,
referred to in the report.*

STATE OF NEW-YORK, }
COMMISSARY-GENERAL'S OFFICE. }

New-York, Dec. 8th, 1829.

*To his Excellency ENOS T. THROOP, Acting Governor of the
State of New-York.*

SIR—

The paper marked B is a statement of the "Ordnance or property account" remaining unsettled between this state and the United States, for issues made during the late war, the history of which is probably known to your excellency. This account was adjusted in January, 1818, by General A. Lamb, then Commissary-General of this state, and Major James Daliba, of the ordnance department, on the part of the United States. The settlement was subsequently sanctioned by the war department, and several payments in kind were received by this state on account of the same. Some time during the years 1822 and '23, I urged the United States to come to a final settlement of this claim, with a view of procuring field ordnance for the artillery, and was then first informed by Colonel Bomford, the ordnance officer at Washington, "that the account had recently been re-examined, and material errors discovered; that in the present state of the claim, it was considered proper to defer making further advances." The subject was then referred by Governor Clinton to Colonel Ferris Pell, who was the agent on the part of this state to settle the claims on the United States, for *disbursements* made during the war. (See Assembly Documents, No. 205, of 13th March, 1826, for some information in relation to the objections of the United States, communicated by this department through the Governor.) Colonel Pell consented to throw up the settlement made by General Lamb in 1818, and I believe the subject remained in statu quo until Jabez D. Hammond, Esq. succeeded Colonel Pell, as the agent of this state; but that gentleman not sufficiently understanding the matter in dispute, he, in the month of August, 1825, requested me to undertake the investigation of the alleged errors: and on the 19th of September following, Governor Clinton sent me a commission appointing me the agent on the part of this state "to negotiate with a duly authorised agent of the United States for a settlement or adjustment of the account, denominated the ordnance or property account, between the United States and the state of New-York, subject, however, to his ratification." In pursuance of this authority, Major Talcott, the officer appointed by the United States, and myself, had several conferences, but had not

finally adjusted the errors complained of, before the act of 15th April, 1826, (see chapter 201 of the Laws of New-York, 49th session,) became a law, repealing the power given to the executive to appoint an agent. Our investigations were consequently suspended, and nothing has since been done to bring this account, (although I have repeatedly brought the subject before the former executives) so long delayed, to a final settlement. During the last year, a payment on this claim, of *two brass field pieces* (with their carriages and implements complete) has been received; and I have been informed that the officer appointed by the United States is ready to bring this account to a conclusion, whenever a duly authorised agent on the part of this state shall be appointed.

Very respectfully, I am

Your Excellency's obedient servant,

ALEXANDER M. MUIR,

Commissary-General.

(B.)

An Abstract of the Account of Arms, Ordnance, Camp Equipage and Military Stores, issued by the State of New-York, per account of the United States, during the War with Great Britain, in the years 1812, 13, 14 and 15—as adjusted on the 12th January, 1818, by General Anthony Lamb, Com. General, on the part of the state of New-York, and Major James Daliba in behalf of the United States, and sanctioned by the War Department.

For arms issued to the regular army, to volunteers in the service, and also those captured by the enemy.

Eighteen pounders cannon,	2
Twelve do do	6
Six do do	6
Four do do	3
Nine do Brass cannon,	2
Six do do do	10
Three do do do	1
Howitzer, brass,	1
Setts implements for cannon,	9
Setts harness for do	49
Boxes of muskets,	32
Muskets and bayonets,	7909
do damaged,	1370
do without bayonets,	2009
Bayonets.	2308
Rifles,	152
Cartridge boxes and belts,	9103
do. do damaged,	541
Cartridge box belts,	617
Bayonet scabbards,	9112
do. belts,	7916
Gun slings,	4926
Number of musket cartridges,	
do casks of powder,	66
do rifle do	22

Boxes of bullets,	246
Sticks of port-fire,	4
Coils of slow match,	3
Six p. case shot, boxes of,	4
do strap do do	2893
Flints,	24
Grape shot and boxes,	321
Eighteen p. cannon ball,	1109
Twelve do do	899
Nine do do	1350
Six do do	264
Four do do	7096
Pig lead, lbs. of,	1
Barrels match-rope,	1
do boxes,	2
Buck shot, boxes of,	600
Blank cartridges,	33
Eighteen p. do	13
Six p. do	18
Ratinett, short pieces,	10
do whole do	4
Flannels do	275
Canteens,	706
Knapsacks,	480
Camp kettles,	5
Bake kettles, with covers,	220
Tin pans,	19
Reams cartridge paper,	384
Blankets,	49
Wall tents,	782
Common tents,	406
Tent poles, sets of,	4
Partitions for tents,	2
Mallets,	9
Hammers,	5
Steelyards,	39
Screw-drivers,	78
Axes,	46
Spades,	1
Shovels,	38
Grind stones,	1
Water pails,	1
Augurs,	2
Tunnels,	26
Tin cups and measures,	1
Ox chains,	9
Cross-cut saws,	1
Ox yokes, bows and rings,	4
Haversacks,	5
Powder horns,	2
Badge barrels,	1
Powder canisters,	

Tompions,	4
Cartridge formers,	21
Port-fire stocks,	2
Drag ropes, sets of,	1
Sponges and rammers,	3
Priming wires,	2
Caissons,	1
Tumbrils, with amunition,	1
Travelling forges, with tools,	1
Wagons, with ammunition boxes,	2
Common wagons,	1
Sleds,	2
Timber for sleds, sets,	1
Bricks, No. of,	2670
Neat's foot oil barrels,	1
Cannon balls, with chains and cuffs,	3
Pleugh, with share and cleaver,	1
Bass drums,	1
Common drums,	9
Broken do	9
Fifes,	11
do broken,	1
Drumsticks,	22
Baskets,	1
Nails, lbs.,	49
Loose balls,	200
Ammunition kegs,	2
Bed sack cloth, pieces of,	8
Window glass, panes,	12
Cords, No.	1
Stove, knee and pipe,	1
Blank books,	1
Stall stands,	1
Watch coats,	2
Axe slings,	107
Tent pin pegs,	12
Coils large rope,	1
Rope, pieces of,	2
Coils of rope,	9
Bags tent pins,	29
Handspikes,	8
Hand hatchets,	3
Hand saw files,	12
Saw setts,	3
Tin lanthorns,	4
Iron candlesticks,	4
Soup basins,	12
Narrow axes,	6
Tinder boxes,	2
Cartridges and balls,	3396

This account was certified as correct, by the Ordnance office,
Washington, 12th January, 1818.

A Statement of Ordnance, Carriages and Implements received by the State of New-York from the United States, on account of the balance due on the above account, shewing the dates of the several payments.

DATE OF PAYMENTS.									
1818, July 25, received by General Lamb,	*10	..	..	10	+10	..	..	..	..
1818, October, do	* 4	..	..	4	+ 4	6000	3000	1150	1150
1822, May 13, do Muir, .....	..	*6	..	6	+ 6	..	..	..	..
1828, December 29, received by General Muir, .....	..	*1	†1	2	..	..	..	..	..
Total received by the State of New-York on this account,	14	7	1	22	20	6000	3000	1150	1150

* Mounted on travelling carriages. † Double sets harness.

STATE OF NEW-YORK, COMMISSARY-GENERAL'S OFFICE.
New-York, December 8, 1828.

No. 315.

IN SENATE,

March 23, 1830.

[CORRECTED.]

REPORT

Of the Select Committee on so much of the Acting Governor's Message as relates to accounts with the United States.

Mr. Bronson, from the select committee to whom was referred so much of his honor the Lieutenant-Governor's message as relates to the claims of this state on the United States, for aid furnished during the late war,

REPORTED AS FOLLOWS, TO WIT :

That a law was passed February 10th, 1818, authorising the Governor to appoint an agent to settle the accounts between this state and the United States, growing out of the expenditures of the late war.

Under this law several agents were appointed, the accounts were arranged, and the best vouchers obtained which the nature of the case would permit, and repeated efforts were made to procure such additional vouchers as would bring the accounts within the rules prescribed to themselves by the officers of the accounting departments of the United States.

It appears from the last report of Mr. Hammond, a state agent under the law of 1818, made to the legislature 14th March, 1826,

[No. 315.]

that the whole amount originally claimed by the agent to be due from the United States, was \$313,699.79

Of which amount has been paid to the first agent, Colonel Pell, \$132,509.60

Amount allowed on settlement with

Gov. Tompkins, by United States, . 12,278.24

Amount rejected vouchers, 54,134.80

Withdrawn vouchers, not deemed properly allowable by the acting officers, 27,413.15

Claims for powder, 36,021.76

Repairs of arms, 28,081.27

290,438.82

Leaving this sum, for which no vouchers have ever been in the hands of the late agents, \$23,260.97

The amount for powder ought to be withdrawn, 36,021.76

The amount for repairs of arms has been changed—see report 6th April, 1825, 28,081.27

Allowed Gov. Tompkins, 12,278.24

\$99,642.24

These several sums, together with the amount paid Col. Pell, being deducted from the original sum claimed, will leave a balance which the agent thinks equitably due to the state, of \$81,547.95

To which he adds a probable balance on account of repair of arms, 4,000.00

\$85,547.95

Making a total amount of claims unsatisfied, according to the opinion of the agent, of \$85,547.95.

On this sum he has computed interest to May, 1826, 13 years, 66,727.31

Making the aggregate amount of debt and interest in

May, 1826, \$152,275.26

It further appears from the books of the Comptroller, that the sum of \$6,615.02 was received from the United States treasurer, on the

12th day of April, 1826, which was shortly after the report alluded to above, was made by Mr. Hammond, which sum the committee presume constituted a portion of the above equitable claim, and if so, it reduces that claim to the sum of \$78,932.93.

Subsequent to the report above alluded to, the Comptroller of this state repaired to Washington, as appears by his report to the legislature, December 12, 1826, and adjusted the claim of the state on the United States, for interest due on the sums of money before allowed and paid to the state agents, which sums amount to \$139,124.62.

The interest allowed on the sum, was.....	\$40,264.86
He also received at the same time from the general government, on claims assigned to the state by the Niagara sufferers,.....	29,934.01
Together amounting to	<u>\$70,198.87</u>

These are all the moneys received from the United States for war expenditures, leaving still due the state in equity, according to the opinion of the late agent, as well as that of the late governor, the sum of \$78,932.93, together with interest thereon. The allowance and payment of this sum has been repeatedly pressed upon the accounting departments, from whose decisions an appeal has been made to two successive secretaries of war, and in both cases without success.

There remains, in the opinion of the committee, no alternative but to abandon this claim, or submit it to the consideration of congress.

To enable the legislature better to judge of the character of the claim, the committee take leave to explain one of the numerous items which compose it, together with the decision had thereon by the war department. More than \$12,000 of this claim is for moneys expended in the transportation of arms and other munitions of war, from the arsenals near the Hudson to the northern and western frontiers, where they were again deposited in our arsenals, and from thence distributed to the militia, as they were assembled for the defence of our invaded frontier.

This service appears to have been contemplated and authorised by the war department, from the correspondence between the late Governor Tompkins and the secretary of war; but the accounting officer, while he admits the expenditure, rejects the payment, on the ground that the arms were removed from one arsenal to another, preparatory to war, for the accommodation of the state, and without being destined to the use of any particular corps.

The secretary of war confirms this decision, and in discussing the subject, describes this service as a "distribution of military stores," terms improper, in the opinion of the agent and your committee, when applied to the removal of stores, a distance of 200 miles toward the frontier of our state, and in the direction of the seat of war. This service, in the opinion of the committee, ought to be denominated *transportation*, either in military or common acceptance, and is that kind of service which is incident to all military operations, the expense of which should be borne by that government to which belongs the defence of the country.

There also appears to be an unsettled account between the two governments, of a different character, which is alluded to in the message of the Acting Governor, as a property account.

It appears from a report made to the Acting Governor by the Commissary-General, that this account was adjusted by the agents of the two governments, being officers of the respective ordnance departments of each, in January, 1818, and the amount due the state of New-York, of each description of military stores stated, and that several payments have since been made thereon, in kind.

The Commissary-General adds, that some time in the years 1822 and '23, "I urged the United States to come to a final settlement of this claim, with a view of procuring field ordnance for the artillery, and was then first informed by Col. Bomford, the ordnance officer at Washington, 'that the accounts have recently been re-examined, and material errors discovered; that in the present state of the claim, it was considered proper to defer making further advances.'"

The Commissary-General was afterwards appointed by the Governor to bring this account to a final settlement, but before much progress had been made therein, the authority vested in the executive was withdrawn, by a repeal of the law of 1818; there are, therefore, no special agents authorised to prosecute either of these claims, and no authority exists to create such agents.

The committee present to the Senate in explanation of, and as a part of their report, so much of the communication from Alexander M. Muir, Commissary-General, to the Acting Governor, as relates to the paper marked B, together with the said paper marked B ; it being an ordnance account between the United States and the state of New-York, for issues during the late war.

And in relation to the whole subject, they propose for their consideration the accompanying resolution.

All which is respectfully submitted.

IN ASSEMBLY,

March 15, 1830.

REPORT

Of the Committee on Medical Subjects, on the petition of Samuel White.

Mr. Harrison, from the committee on medical subjects, to which was referred the petition of Samuel White, praying for aid to enable him to establish a lunatic asylum in the city of Hudson,

REPORTED :

That they have had the same under their consideration, and have examined with care, the several reasons assigned by the petitioner for asking legislative assistance in the objects contemplated by him.

The petitioner represents, that for the Hudson lunatic asylum, which he proposes to establish, and for which he solicits the bounty of the state, he has selected a building which "is situated on the borders of the city of Hudson," commanding an extensive prospect of Hudson's river and of the surrounding country : that this building is of stone, and will be of sufficient magnitude, with the additions and repairs which he intends to make, to accommodate sixty patients : That it is surrounded by gardens and yards, suitable for exercise and recreation ; is easy of access from the water, and that its location is salubrious.

The petitioner further states, that his means are inadequate to sustain the expense of the improvements to be made, and for the supply of the necessary wants of such an institution.

It does not appear to the committee from the statement of the petitioner, that he owns the building ; nor can they learn by what te-
[No. 316.]

nure it is held; nor has he stated the sum which would be required to complete his repairs, and to enable him to carry into effect his design. Under these circumstances, however praise-worthy may be the attempt to meliorate the condition, and to restore again to society and usefulness, that unhappy description of persons, for whose benefit this asylum is to be established, your committee feel themselves entirely unprepared to say what amount might be found necessary to enable the petitioner to execute his benevolent intentions. And as no information of this kind has been furnished to the committee, and more especially in the present exhausted condition of the treasury, in connection with the fact, that in the asylum at New-York, we possess the means of accommodation for many additional patients; and that the state has extended its munificence to that institution with a liberal hand, your committee cannot hesitate in regard to the conclusion to which they ought to arrive. They have therefore directed their chairman to submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted, and that he have leave to withdraw his petition.

IN ASSEMBLY,

March 15, 1830.

REPORT

**Of the Committee on Claims, on the petition of
John Kane.**

Mr. Hall, from the committee on claims, to which was referred the petition of John Kane, of the county of Montgomery, claiming bounty lands on account of services rendered by his father during the revolutionary war,

REPORTED :

That the petitioner sets forth in his petition that he is the son and only surviving heir of Henry Kane, who was one of that band of patriots who, early in the war of the revolution, took up arms in defence of their country against the common enemy : That the said Henry Kane enlisted in the year 1777, in Capt. McKean's company, in the first New-York regiment, commanded by Col. Van Schaick : that he continued in service in said company, until the taking of Fort Stanwix by the British in 1779, when he was taken prisoner, and conveyed to Canada, where he remained in captivity, as your petitioner believes, until the close of the war.

Among the documents referred to your committee, are the affidavits of Christian House and David Hinmore, who testify that they were personally acquainted with one Henry Kane in the years 1778 and 1779, who was then a soldier in Capt. McKean's company, in Col. Van Schaick's regiment ; and that the said Kane died about fifteen years after the close of the war, in Montgomery county, leaving a son by the name of John Kane, who is still living in said county.

Your committee view the claims of these soldiers of the revolution to be founded on contract ; and, when substantiated, cannot,
[No. 318.]

without a violation of good faith, be resisted. That claims for bounty lands, once existed, resting on the faith of the state, is admitted by all; and your committee consider it derogatory to the character of the great and powerful state of New-York, to shut out the just claim of the war-worn soldier, who fought the battles of his country, or his legal representatives, on account of statute limitation. But in the case of the petitioner, your committee have doubts in regard to the justness of his claim. They have examined, among other documents, the register of the New-York regiments now in the Secretary's office, but they cannot find the name of this soldier in the register of McKean's company. It appears that a man by the name of Henry Cain enlisted in Capt. Copp's company, in said regiment, in the year 1777, and that he was taken prisoner in the year 1779. It will be perceived that the name of the soldier returned is spelled C-a-i-n, whereas the name of the petitioner is spelled K-a-n-e; and the circumstance of his being returned as belonging to a different company from that in which it is represented that the father of the petitioner served, your committee are induced to believe that the soldier returned was not the father of the petitioner. And not being satisfied that the petitioner has any just claim on the state for bounty lands, they recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted, and that he have leave to withdraw his petition.

IN ASSEMBLY,

March 15, 1830.

REPORT

**Of the Committee on Grievances, on the petition of
Salmasius Bordwell and William Brayton.**

Mr. Granger, from the committee on grievances, to whom was referred the petition of Salmasius Bordwell and William Brayton,

REPORTED :

The petitioners represent, that in the fall of the year 1828, they contracted with the canal commissioners to re-build three stone locks upon the Champlain canal at the village of Fort Ann : That while they were executing the work in conformity to their contract, they were directed by the acting canal commissioner, and by the superintendent, to make very extensive alterations in and additions to said locks, with which directions they complied.

That in June last they presented to the canal board their accounts for extra work ; but that they were not well informed as to what evidence might be necessary to furnish to said board, in consequence of which, a large deduction was made from their just account. And the petitioners allege, that by reason of a resolution of said canal board, by which they refuse to all claimants a re-examination of their accounts, they are unable to obtain justice in the premises.

These facts are substantiated by affidavits presented by the petitioners, by statements made before the committee by Mr. Bouck, the acting canal commissioner referred to, and by a copy of the resolutions adopted by said canal board. Without questioning the propriety of the resolution of said board, which your committee be-

Heve may, in most cases, be necessary, they are unanimously of opinion that the petitioners present a case which authorises and requires a departure from that rule. They have directed their chairman to ask leave to introduce a bill.

IN ASSEMBLY,

March 15, 1830.

COMMUNICATION

From the Regents of the University.

To the Honorable the Assembly :

The Regents of the University, to whom were referred, by the honorable the Assembly, three several petitions from the Redhook academy, the Union literary society, and the Union-Hall academy, relative to their exclusion from the distribution of the income of the literature fund, made by the Regents in April 1829,

RESPECTFULLY REPORT :

That the Red-Hook academy and the Union literary society not being incorporated by the Regents, and not having placed themselves under their visitation within the period prescribed by the act of April 13th, 1827, were not legally entitled to participate in the distribution of the income of the literature fund, made by the Regents in April 1829, and were not therefore included in that distribution. These facts were stated in the annual report of the Regents to the Legislature made in 1829 ; and the Regents are not aware of any other facts material for them to state in relation to these two institutions : But, in relation to Union-Hall academy, whose trustees complain of their exclusion from the distribution of the income of the literature fund, made by the Regents in 1829, and claim to be now admitted to a share in said distribution, the Regents have to report, that this institution was originally incorporated by them ; and would have been entitled to participate in the distribution of 1829, if its report to the Regents for that year had been in conformity with their ordinance : but that not being the case, the institution was not

included in the distribution for that year. It was not, however, absolutely excluded ; it being permitted to amend its report during the last annual session of the Regents. . And, in pursuance of such permission, an amended or supplementary report was received from the trustees of the academy, but not in season to be acted on by the Regents at their last annual session. The supplementary report thus made, having been duly considered by the Regents, and it appearing to them that the defects in the original report of the academy had been satisfactorily accounted for and supplied, they did, at their last meeting, direct their treasurer to pay to the trustees of said academy, such sum as it would have been entitled to in April 1829, if its report of that year had been found sufficient.

Respectfully submitted,

By order of the Regents.

SIMEON DE WITT, *Chancellor.*

G. HAWLEY, *Secretary.*

Albany, March 15th, 1830.

IN ASSEMBLY,

March 16, 1830.

REPORT

Of the Select Committee, on the petition of the Board of Auditors of the town of Sherburne, in the county of Chenango.

Mr. Pike, from the select committee to which was referred the petition of the board of auditors of the town of Sherburne, in the county of Chenango,

REPORTED :

That the petitioners represent, that under a law of 1828, the sum of two hundred dollars was levied by the supervisor of the county of Chenango, on the real and personal estate of the inhabitants of said town of Sherburne, for the purpose of building a town-house in said town, and that the aforesaid law authorised the inhabitants of said town to vote such further sum as might be necessary to build, erect and finish such town-house. That the inhabitants of said town refuse to raise any further sum for the purpose aforesaid, and that the said sum of two hundred dollars, being wholly insufficient, now lies useless and unappropriated. The petitioners pray that a law may be passed authorising that town, by vote of the inhabitants thereof, in town-meeting, to appropriate the said sum of two hundred dollars, to the payment of such town expenses as to the said inhabitants may seem meet.

Your committee believe the facts set forth to be true, and that the prayer of the petition is reasonable and ought to be granted. A bill has accordingly been prepared, and leave is now asked to introduce the same.

IN SENATE,

March 24, 1830.

. REPORT

Of the Select Committee, on a bill from the Assembly, to amend the Charter of the city of New-York.

Mr. Allen, from the select committee, to which was referred the bill from the Assembly, to amend the charter of the city of New-York,

REPORTED AS FOLLOWS, TO WIT:

That the principal alterations of the present city charter, contemplated by the bill referred to your committee, appear to be as follows :

1st. The common council, as now constituted, form but a single house or board, and the bill from the Assembly proposes to divide them into two distinct chambers, with concurrent jurisdiction, and possessing a check upon each others proceedings.

The utility of this provision, in the opinion of the committee, must be apparent to every member of the Senate. It will prevent hasty legislation ; cause greater consideration to be given to subjects coming before the two boards, and will naturally excite a scrutiny and inquiry, as to the merits of the acts of that branch originating the measure, which cannot prove otherwise than salutary.

2d. By the present charter, the mayor and recorder are both members of the common council, and no board can be formed unless one of them is present. The bill proposes, that neither of them shall be members after the law shall go into effect. By this pro-
[No. 322.]

vision it is intended that these officers shall have more time to devote to the legitimate business of the station they fill, than is now allowed them.

The mayor, as chief magistrate of the city, and performing an important part in the city government, will constitute a wholesome check on the doings of the common council, by placing his *veto*, whenever it may become necessary, upon their laws and ordinances.

This salutary provision could not be carried into effect if the mayor was continued a member of either of the boards, as it would be inconsistent with the common usage and formation of government, as well as embarrassing in its operation, were this power given to an officer who was a member of the body, from which the act he was bound to review, emanated.

The recorder, as presiding judge of the court of general and special sessions of the peace, is employed in those courts two thirds of each month in the year. His time therefore, being principally occupied as a judge of these courts, and much of what remains, in performing the duty of a commissioner, under the insolvent acts, but little of his attention can be given to municipal matters; and under such circumstances, it would seem proper that he should be relieved from attending the meetings of the common council. As a member of the board of common council, and having a vote on the expenditure of the money collected in taxes from the people, there is not the same responsibility attached to him, or his doings, that there is to the other members. He receives his appointment from the Governor and Senate, and holds his office for five years, while the others are subject to the ordeal of the ballot-box once in each year. As a member of the legal profession, the recorder is in no case relied on, when questions of law arise in the common council, as there are always a portion of the members who belong to the profession, and in addition, the corporation appoint their own attorney and counsel, whose duty it is, regularly to attend all the meetings of that body. The fact is therefore, that while the time of this officer is greatly encroached upon, by continuing him as a member of the common council, no benefit whatever is derived from his services in that capacity to the public.

The fourth and fifth sections of the bill provides, that the election for charter officers shall commence on the second Tuesday in April. The elections are now held at the same time as that of our general

election. The members of the common council being, in fact, nothing more than the guardians of the property, and the disbursers of the money of the inhabitants of the city, it seems to be proper that the choice of them by the people, should not be subjected to the excitement usually exhibited at our general elections. Whenever the office of register, county clerk, sheriff, coroner, and other offices of emolument are to be filled, it is natural that a large portion of the attention of the electors will be drawn to that particular object; and it has been feared therefore, that the influence of the candidates or their friends, who are seeking for these offices of profit, has had an injurious bearing upon the proper choice of charter officers, and this conjecture may in a greater or less degree, apply to the election of other officers chosen at our general election. A question somewhat similar has been rejected in the other house, during the present session, (as the committee believe) on a proposition to fill vacancies occurring in the office of justice of the peace, at the general election, instead of making the choice at the town-meeting, as at present provided for. If this salutary provision, of keeping the election of local officers distinct from the general election, is beneficial in other parts of the state, it must be so in the city of New-York, and ought therefore, to be carried into effect.

The seventeenth section of the bill designates the general duties to be performed by the mayor. This is a provision not contained in the old charter, and appears to the committee to be both salutary and proper. The mayor being relieved from his regular attendance at the meetings of the board, will have more leisure and a better opportunity to learn the true state and condition of the several matters connected with the police, finance, and other subjects appertaining to the welfare and prosperity of the city. His time and attention being devoted to the duties of his office, he will be better fitted for communicating to the common council valuable information on the various subjects connected with the improvement, security, health, cleanliness and ornament of the city; and at the same time, to exercise a salutary control over the several officers placed under his supervision; to receive and examine into complaints for a violation or neglect of duty, and to perform every other service that may be required of him in his official capacity.

The eighteenth and nineteenth sections of the bill provides that appropriations shall be made for every branch of expenditure, and that no money shall be drawn from the treasury unless first appropriated to the object for which it is drawn. This also is a new pro-

vision, and the committee believe, a very necessary one. It appears, that a leading object in adopting the measures which has finally brought this subject before the Legislature, was to prevent the lavish and unnecessary expenditure of the people's money by the common council.

In order that the Senate may have some idea of the increased and useless expenditure by the common council, the committee beg leave to state, that it appears from the annual reports of the city comptroller, that in 1825, the taxes for county expenses was but \$300,000; while in 1828, they were raised to the sum of \$450,000. In 1825, the corporation was indebted, for loans on their bonds, \$112,000; while in 1828, they had increased this debt to \$343,500: making an increase of burthen upon the city in three years, by taxes and debt, of \$381,500. The amount paid for salaries and the services of the watchmen, lamp-lighters, &c. in 1824, was about \$112,000; but in 1827, the salaries of nearly all their officers having been increased, it amounted to more than \$150,000. In 1825, there were expended in celebrations of various kinds, for the entertainment of strangers of distinction who visited the city, and for refreshments at the city-hall and alms-house, \$19,479 77. In 1826, for the same purpose, \$20,230 77. In 1827, the amount for these objects was reduced to \$13,587 11: and in 1828 they were further reduced to \$7,150 72. These reductions were, no doubt, caused by the notice which had been publicly taken of the matter by the people, who were beginning to press upon the attention of the Legislature the necessity of an alteration in the organization of the common council. Two acts, at different sessions of the Legislature, were passed for the relief of the people of New-York; but by the management of those who were receiving the corporation bounty, they were both defeated.

In 1824, an expenditure appears, entirely new in the annals of the corporation accounts. *One hundred dollars for refreshments to the court and jury.* In 1826, the charge for this object is increased to \$200. In 1827, it is still increased to the sum of \$484 37½; and in 1828, it is reduced to \$140. This is but a trifling item in the corporation expenditure; but it helps to show the progress of illegal acts, when once begun and suffered to continue with impunity. No appropriation could have been made for these court expenses, or any authority for paying them, except that assumed by the judges themselves, all of whom were members of the common council.

Nor is there any regular appropriation ever made, as the committee are informed, for any object of expenditure whatever, particularly for the large amounts disbursed in celebrations, parades and refreshments ; or any inquiry entered into, whether the funds are in existence, or in any way available : for if money is wanted, the bond of the corporation will always bring it, as the whole real estate of the city is bound for the payment of the debt. An elucidation of this fact has been given in the comparison the committee show of the debt by bond, between 1825 and 1828.

The committee have reason to believe, however, if the bill under consideration should pass into a law, that a check will be given to this crying evil, (so much and so justly complained of by the people of New-York,) by the provision directing that appropriations shall be made for every object of expenditure, together with the prohibition in the nineteenth section, forbidding the borrowing of any money without the consent of the Legislature, except in anticipation of the regular revenue of the city.

The twenty-first section of the bill is also new, and directs that the executive business of the corporation shall be performed by distinct departments. This appears to be necessary, both on account of relieving the members of the common council from this addition to their duties, as well as the placing of the business into the hands of responsible and capable persons. Much of the business is now done, as the committee are informed, by committees of the board. It is frequently by their orders that expenditures are made and disbursements directed; and in this way both the legislative and executive business of the board is performed by the same persons.

The eleventh section is also new. That section prohibits any member of either board from holding any office of profit or emolument under the corporation. Some evils have existed, as the committee are informed, which makes this provision necessary ; but whether so or not, they have scarcely deemed it necessary to inquire, as the reasonableness of the provision must be apparent to every reflecting mind.

These are the principal features of the bill, which alter the existing charter of the city ; and the other provisions, as far as the committee have been able to discover, in the short time they have allowed themselves to make up this report, are incorporated either in the present charter, or in some of the acts amending the same ;

and are only embodied in this bill in order that it might be the more complete in its details, and as perfect as practicable in its enactments.

The solemnity with which this bill has been agreed to by the inhabitants of New-York ; first by a convention of the people, chosen for the express purpose ; then by the free suffrage of the electors ; and lastly, by the almost unanimous consent of the corporation, entitles it, in the opinion of the committee, to the favorable consideration of the Senate.

The committee have discovered nothing in the bill requiring amendment, and they therefore report in favor of its passage.

IN SENATE,

March 17, 1830.

REPORT

Of the Select Committee, to whom was referred the petitions of the inhabitants of the city of Albany, relative to the apportionment of school monies and the establishment of district schools.

The select committee, consisting of the Senators from the third senate district, to whom was referred the petitions of the inhabitants of the several wards of the city of Albany, and also one of the inhabitants of said city generally, praying for a modification of the law relating to the school money apportioned to that city, and for the establishment of district schools,

REPORTED AS FOLLOWS, TO WIT :

That they have had the subject before them. It appears that the monies apportioned to this city out of the common school fund, have heretofore been paid over to the Lancasterian school; and that the district system has not been adopted within said city. The petitioners pray that the city may become districted, and that they may be allowed to participate in the benefits arising out of the common school fund. The committee, after hearing the agent for the petitioners, and also those on behalf of the Lancasterian school, suggested that it was probable an arrangement would be made through the intervention of the corporation of the city. This course has been adopted, and the result has been the adoption of a bill by the common council, which is approved of by those interested. As to the justice of the claim of the petitioners for relief, the committee

refer the Senate to the report of the Superintendent of common schools, made to the Assembly, at the session of 1827, on the same subject. See journal of that year, page 746. The committee ask leave to introduce the bill.

IN ASSEMBLY,

March 24, 1830.

REPORT

Of the Governors of the New-York Hospital, in compliance with a Resolution of the Assembly, of the 10th of March.

To the honorable the House of Assembly of the State of New-York.

The Governors of the New-York hospital, in compliance with a resolution of the house of the 10th March instant,

RESPECTFULLY REPORT :

That by the said resolution they are requested to report :

The denomination of the several officers attached to the institution ;

Their names ;

Their residence ;

Their duties ;

Their compensation ;

Their grades ;

The number of each grade ;

The number of male nurses ;

The number of female nurses ;

The number of domestic and other servants ;

Their compensation ;

The compensation of each person attached to or connected with the institution by way of salary, perquisite or otherwise ;

A detailed account of the receipts and disbursements of the last year ;

[No. 324.]

The sources from which the sinking fund was increased the last year ;

The price per week for keeping insane patients ;

A classification of such patients ;

The incidental charges attending such patients ;

The species of insanity with which each patient of the last year, was afflicted ;

The means of healing them ;

The rules and regulations of the institution ;

And such other information as may be in the power of the governors, touching the objects intended to be promoted by the institution.

The governors respectively proceed to lay before the house, the information required upon each of these points.

The board of governors, which directs all the concerns of the institution, consists of twenty-six members, including a president, a vice-president, a treasurer and a secretary. No one of these receives directly or indirectly, any compensation by way of salary, perquisite or otherwise, their services being entirely gratuitous.

The residence of every officer attached to the institution, is in the city of New-York.

The names of the governors and all the officers, except those who are hereinafter named, will be found in a printed *State of the New-York Hospital, for the year 1829*, herewith transmitted, and marked A.

The duties of the respective officers, are defined in the by-laws, which are also herewith transmitted.

The governors have under their charge, two distinct establishments, the one called the New-York hospital, situated not far from the city-hall, the other called the Bloomingdale asylum, for insane patients, distant from the former about seven miles.

The officers of the New-York hospital, are a superintendent and matron, who being man and wife, receive a joint salary of twelve hundred and fifty dollars, they necessarily reside in the hospital, and are found in board and lodging. A building formerly used for insane patients, is now appropriated to sick seamen, and denominated the marine department. An assistant to the superintendent aids in the management of this department, with a salary of three hundred dollars a year ; his name is Samuel Leverich.

The clerk receives a salary of seven hundred and fifty dollars.— The apothecary four hundred dollars. The librarian, of one hundred dollars, and the orderly man, (at present John Meacham) ninety-six dollars.

There are ten male nurses and twelve female nurses, who receive, some seven and some eight dollars a month. The whole amount of their wages during the year 1829, was \$1,920.

Seventeen domestics or servants are usually employed, viz: 1 market and cartman, 1 gate-keeper, 1 baker, 1 gardener, 1 carpenter, 4 washers, 2 who attend the baths and perform other services, 4 in the kitchen, 1 chambermaid, 1 man who attends to the furnaces, which supply the wards with warm air. The wages of these servants, are not always the same; but on an average they receive from \$7 to \$10 a month. The whole amount of their wages during the year 1829, was \$1,756.50.

The amount of salaries paid to the officers in the same year, was \$2,621. Making the total of salaries and wages, \$6,297.50. It is however to be remarked, that the assistant to the superintendent received during that year, only \$125, though his salary is \$300.— So that the above total, if intended to furnish an estimate of the ordinary expense, ought to be increased to \$6,472.50.

The first grade of medical officers attached to the hospital, is that of consulting physician. It is merely-honorary and bestowed upon those who are thought to have merited it by their services as attending physicians or surgeons. There are at present, three consulting physicians, but the number may be increased at the discretion of the governors. They have no duties to perform, but are invited to attend all capital operations.

The next grade is that of the attending physicians and surgeons. There are four attending physicians and four attending surgeons.— The former having charge of the medical patients, the latter of the surgical patients. Their duties are important and laborious; one physician and one surgeon, are in constant attendance. They receive no compensation, emolument or perquisite, unless the privilege about to be explained, be termed such.

Tickets are sold annually, to such students of medicine as choose to buy them, which entitle the students to visit the hospital, and see

the practice of the house. And they are also allowed the use of the library upon payment of a small fee. From these sources the hospital received last year \$270.

Each consulting physician and each attending physician or surgeon has the privilege of admitting three of his own students to see the practice of the house, and to the use of the library, gratis.

Next to the attending physicians and surgeons are one house physician and one house surgeon. These are always young gentlemen who have passed their examination, for a license or degree.—As they are never permitted to sleep out of the house, they are necessarily found in board and lodging. But they have no other compensation, emolument or perquisite whatever.

The house physician and house surgeon, have each two assistants, whose services are entirely gratuitous. The present assistants of the house physician, are Gurdon Buck and Henry Dubois. Those of the house surgeon are John Gadams and Thomas S. Swaim.

The apothecary, orderly-man and nurses, whose salaries have been already mentioned, complete the medical establishment of the hospital.

At the Bloomingdale Asylum there is a superintendent, Laban Gardner, whose wife is matron. They together receive a salary of \$1,250 a year, and their board and lodging.

There is one consulting physician. Being obliged to visit the asylum, distant seven miles from his residence, he was allowed the last year \$312.

A resident physician lives in the house, and being prohibited from practising out of it, has a salary of \$800 a year, and his board and lodging.

There are ten male and four female nurses, whose wages are from nine to ten dollars a month. The whole amount of their wages, for the year 1829, was \$1,554.

The domestics and servants employed at the asylum are at present, three cooks, four washers, and three men who are employed on the farm. Their wages are not always the same, and their number is sometimes greater, but the aggregate amount of their wages for the year 1829, was \$1,248.92.

Statements D. and E, herewith transmitted, shews the whole amount paid for salaries and wages during the year.

There are no other persons attached to or connected with the institution, who receive any compensation by way of salary, perquisite or otherwise.

A detailed account of the receipts and expenditures of the last year will be found in the document marked A, already referred to, and in the printed report marked B, herewith transmitted.

The sources from which the sinking fund was increased during the last year, are two :

1. Dividends on stock forming part of that fund ; these dividends amounted to \$1,396.70.

2. The balance of the state annuity of \$10,000, remaining after paying interest at 6 per cent on \$137,000, borrowed of Messrs. Edgar and Le Roy. This balance was \$1,780.

The price per week for keeping maniac patients varies according to their ability and the accommodations afforded them, from \$2 to \$10. The board list for the last month, marked C, is herewith transmitted, and may be considered as exhibiting the average charges. There are no incidental charges attending such patients.

The printed Bloomingdale Asylum report, marked B, shews the classification of the patients into such as are afflicted with monomania, mania, dementia, idiotism and delirium from intemperance, with the species of insanity with which each patient of the last year was afflicted.

The governors suppose that it was not the intention of the House to require the names of the patients, with the nature of the disorder of each. Such a disclosure would be painful to the families and friends of many of them. But the names can be given if the House shall desire it.

With respect to the mode of treating the patients, it is presumed that the governors are not expected to enter into particulars. To do so would require a dissertation on the various species of insanity, their causes, symptoms and mode of cure, and it would fill a volume.

The means employed at the Bloomingdale Asylum, are either medical or meral, or both united.

Such is the inscrutable connection of the mind and body, that they continually act and re-act on each other. In a large proportion of maniacal cases, diseases in the bodily system produce derangement in the mental, and in almost all the former, aggravate the latter. Medical treatment therefore cannot, in general, be dispensed with. Restoring health to the body is one important means of invigorating the mind. But moral treatment is always a useful auxiliary, and is sometimes alone an efficacious remedy. It consists in treating the patient in the manner best adapted to dissolve morbid associations of ideas ; in restoring the power and the habit of self-control ; in substituting agreeable reflections and sensations for those which are painful and irritating ; in inducing a habit of employing the judgment, which, like every other faculty, is strengthened by exercise. The means of effecting these ends must be adapted to the case of each patient, and of course are extremely various. Harsh treatment and all needless restraint is avoided. Chains are never used. Even confinement to the cells is seldom resorted to. As much liberty as is consistent with safety is allowed to the patients. Many are permitted to leave the house, and to employ themselves in the garden or on the farm. They are sometimes taken out to ride, in a carriage kept for that purpose. Occupations of different kinds are provided for them. They are treated with kindness, and their comfort is particularly attended to. It is impossible to describe this treatment more minutely, for the reason already given, namely, that its application to individual patients must be adapted to their particular cases. But the governors are happy to add, that the general result is extremely favorable—many are cured. The disorder of many others who are not entirely restored is greatly alleviated ; and certainly much less misery is experienced than in the old mode of treating these unfortunate objects of similar establishments.

It ought to be remarked, that the proportion which the number of cures effected in the course of a year bears to the whole number of patients, other things being equal, must diminish as the establishment grows older. Because the incurables, not being discharged, remain from year to year to swell the number of patients, and gradually become a considerable portion of the whole, while on the contrary, those who are cured, immediately depart.

The governors have no other information to give touching the objects intended to be promoted by the institution, unless it be that their experience has shown the importance of separating the differ-

ent classes of patients, and that their building, in many respects excellent, is deficient in accommodations for this purpose. During the past year they have, in order to remedy this defect, erected a separate building. Another for female patients is still wanting. They trust that the institution is in a state of improvement, and that in its present state it is not unworthy of the patronage which the Legislature have so liberally bestowed,

The rules and regulations of the institution are contained in the by-laws herewith transmitted.

Any further information in their power which the Assembly may desire, the governors will be happy to afford. And they take this opportunity of renewing the expression of their gratitude for the fostering care which the Legislature have uniformly manifested towards the charity committed to their charge.

PETER AUGUSTUS JAY,
President.

March 19th, 1830.

IN ASSEMBLY,

March 24, 1830.

REPORT

Of the Canal Committee in favor of Andrew P. Tillman.

Mr. Vanderpoel, from the standing committee on canals, to whom was referred the petition of Andrew P. Tillman, of Geneva, praying for the passage of a law empowering the canal board "to inquire into the facts of his case, either by the examination of witnesses, or by the inspection of an engineer, and that they settle with him, on principles of equity and justice, and pay him a just compensation for his labor and expenditures in the public service;" and to whom was also referred the report of the canal board relative thereto, made on the fourth of March, instant,

RESPECTFULLY REPORTS—

That although they are decidedly averse to the granting of applications of this nature, in ordinary cases, yet after a deliberate examination of the matters submitted to them, they have come to the conclusion, that the prayer of the petitioner ought to be granted.

For the purpose of exhibiting the grounds on which they have deemed it proper to except the present application from the general rule, and also with the view of enabling the House to form an accurate decision on the subject, it will be necessary to enter into a detailed, and perhaps somewhat tedious, account of the circumstances attending the case of the petitioner.

On the 28th of August, 1827, the petitioner, together with Wilson N. Brown, entered into a contract with the canal commission-

ers, to construct locks No. 3, 4, 5, 6, 7, 9 and 10, of the Cayuga and Seneca canal, and to excavate the lock-pits, and also to construct sections No. 11 and 12, and make a road bridge on section No. 11.

For the work thus contracted to be performed, the contractors were to be paid as follows, viz. "For all necessary excavation within the banks of the canal, or under them, at the rate of $9\frac{1}{2}$ cents per cubic yard; for embankment, 10 cents per cubic yard; for grubbing and clearing, at the rate of \$1 75 per rod for sections No. 11 and 12, and \$187 50 for road bridge on section No. 11; and for constructing locks No. 3, 4, 5, 6 and 7, at the rate of \$181 per foot lift; and for locks No. 9 and 10, at the rate of \$165 per foot lift, which price was to include all the expense necessary to a full completion of said locks, in every respect: and for excavating lock-pits at the rate of 20 cents per yard, excepting 200 yards in lock-pit No. 6, for which 75 cents was to be paid." (See contract in document A annexed to report of canal board of 4th March, 183.)

Immediately after the making of the contract, Brown released to the petitioner, who has since continued to be solely interested therein.

During the autumn of 1827, considerable progress was made in the execution of the work; but great and unexpected difficulties were encountered, in the excavation of several of the lock-pits and in keeping out the water; and the whole work was rendered more expensive by alterations made by the engineer in the plan of the locks, and by new directions given by the acting commissioner and the engineer. (See report of W. C. Bouck, in behalf of canal commissioners, dated February 18th, 1829, annexed to report of canal board.)

In consequence of the increased expense arising from these causes, the petitioner, in February, 1828, applied to the canal board, for an extra allowance, beyond the contract price, to enable him to go on with his work. The engineer, Mr. Dennis, made an estimate of the increased expenses, from which it appeared, that they would amount to \$6,685, which sum was accordingly, by an order of the board, made on the 19th of February, 1828, directed to be paid to Mr. Tillman.

At the time this estimate and allowance were made, the locks were none of them completed; but it was supposed by the engineer

and by the board, that a pretty fair estimate might be formed of the difference in the character of the work, from what was contemplated previous to the contract, and the allowance was made prospectively as well as retrospectively. (See report of canal board, and estimate of Noah Dennis, subjoined thereto.)

In the spring of 1828, the petitioner resumed the execution of his contract, and during that year completed the whole work, to the satisfaction of the commissioner and the engineer. But as he encountered still further unforeseen expenses, beyond the original contemplation of the engineer, and more than he expected when he made the estimate on which the allowance of \$6,685 was made, the petitioner expressed his intention again to apply to the canal board. With a view to such an application, Mr. Dennis, the engineer, in September, 1828, made a second estimate for a further extra allowance, amounting in the whole to 7 or 800 dollars; which was laid before the board. The petitioner however, when he came to present his application, asked not only an extra allowance in respect to the matters then reported on by the engineer, but he claimed a rehearing of that part of his case, in respect to which the former allowance of \$6,685 had been made, on the ground that the allowances then made were wholly inadequate to meet the unforeseen expenses for which they were intended to provide, and that the estimate of the engineer on which those allowances were made, (and which so far as it was prospective in its character, was to a considerable extent, necessarily conjectural,) had been found to be entirely erroneous. He also alleged that the unforeseen expenses, in reference to which the last report of the engineer had been made, greatly exceeded the estimate contained in such report, and that instead of receiving 7 or 800 dollars therefor, he was equitably entitled to a much larger sum.

In connexion with these allegations, the petitioner also alleged that the original prices upon which he had contracted to construct the locks, were altogether too low; that prior to 1827, no wooden locks had been constructed in this state; that he had no knowledge or experience of their cost, and could get no information on the subject, except from official reports and estimates; and that he had been induced to undertake those mentioned in the contract, at the prices therein specified, in consequence of his reliance on the estimates of the engineers employed by the state. He also alleged that the contract price for excavating the lock-pits, was much less than it should have been.

It appears to have been conceded by the acting commissioner and engineer, that the petitioner's contract prices were much below the value of the work. (See report of canal board, of March 4th, 1830, and report of W. C. Bouck, in behalf of canal commissioners, February 18th, 1829.) But the canal board very properly decided, that they could not vary the terms of the original contract—the statute which gives them the power to make extra allowances, confining that power, to cases where the extra expenses and labor in constructing the work contracted for, are occasioned either by new directions given by a canal commissioner, engineer or superintendent of repairs, after making the contract; or where they are rendered necessary, in consequence of the work proving to be of a different character or description from what it was contemplated to be by the commissioners, or engineer, at the time of making the contract; and expressly forbidding the making of any allowance in consequence of the unfavorable terms of the contract. (See report of canal board, and 1 R. S. 230, § 77.)

In regard to a re-hearing of the matters, in reference to which the allowance of \$6,685 had been made, the board also decided, and as your committee think very discreetly, that under the existing laws, they had no power to re-examine an allowance once made. They therefore informed the petitioner, that no allowance could be made, except for unforeseen expenses in those portions of the work which were not adverted to in the first estimate; and they gave him to understand, that the seven or eight hundred dollars mentioned in the last estimate of the engineer, would probably be allowed him, but that if he insisted on further indemnity, his application must be made to the Legislature.

The petitioner accordingly applied to the last Legislature, and a favorable report was made by the canal committee. They also introduced a bill, giving the requisite power to the canal board, to hear and decide upon the claim of the petitioner, which though it received a respectable support, failed in the Assembly. It is but justice however, to state, that the report of the canal committee was very general in its terms, and that probably from want of time, they did not attempt to present to the House the details of the case.

The committee have been attended by the petitioner, and have looked into the affidavits and other documents accompanying the petition. His claims may be arranged under three distinct heads.

1st. Claims for extra allowances arising from the unfavorable terms of his contract, which terms, so far as relates to the construction of the locks, were adopted by him, as he alleges, on the estimate of the engineer.

2d. Claims for unforeseen difficulties, passed upon by the canal board in February, 1828, and for which there was then allowed \$6,685, on the estimate of the engineer, which estimate is alleged to have been wholly insufficient.

3d. Claims for extra allowances for unforeseen difficulties, not intended to be covered by the allowance of February, 1828, because not then foreseen, and for which the engineer reports, that an allowance of 7 or 800 dollars ought to be made, which is also alleged to be wholly insufficient.

I. In regard to the claim for extra allowances, arising from the unfavorable terms of the contract, the committee would observe, that whilst they are decidedly of opinion, that under ordinary circumstances, the state ought not to be responsible for losses of this nature; and whilst, on that ground, they approve of the provisions of the existing statute, which inhibits the canal board from making any such allowance, yet that cases may occur, in which it is not only proper to indemnify the contractor, but where a refusal to do so, would be in the highest degree unjust.

In the present case it is alleged by the petitioner, that the prices at which he undertook to construct the locks in question, were far below the real value of the work. That such was the fact, is clearly proved by the evidence before the committee. Five of the locks, by the terms of the contract, were to be constructed at the rate of \$181, and the other two at the rate of \$165 per foot lift. The number of feet lift in the whole locks was 58½, which at the contract prices, amounted for the whole, to about \$10,425 60.

By the statement of Messrs. Thomas and Dennis, principal and resident engineers, made to Mr. Bouck, the acting commissioner, on the 6th February, 1829, (a copy of which is hereunto annexed,) it appears that these engineers were then of opinion that a fair price for two of the locks would have been \$260 per foot lift; for two others, \$250 per foot lift; for two others, \$230; and for the one remaining, \$225 per foot lift—making an average of about \$245

per foot lift. The cost of the seven locks according to this latter estimate would have been about \$14,332.50—making a difference between the contract price and the amount certified by the engineers as a fair price, of \$3,906.90, independently of any extra allowances to be made for unforeseen difficulties, or for alterations in the plan of the work; for it must be borne in mind, that the estimate of Messrs. Thomas and Dennis, made in February, 1829, and on which the above calculation has been founded, was for the locks as originally intended, and was wholly exclusive of the extra allowances previously recommended to the canal board.

It is stated by the petitioner that one or two contracts had been made for the construction of those locks, prior to the making of the contract by Tillman and Brown; that those contractors, having abandoned the work, and the petitioner being deeply interested in its execution, in consequence of continued interruptions in the business of his tannery, which could not be carried on until the completion of this part of the canal, he offered to enter into the contract in question upon the same terms on which the work had been let to those who preceded him; that he was personally unacquainted with the cost of such works; and that he was induced to take the contract on the terms specified therein, because he understood that those terms corresponded with the estimates of the state engineer, made prior to the making of the contract. He has also offered to prove, that the engineer, Mr. Dennis, subsequently informed him that prior to the construction of the works in question, he had no personal knowledge of the cost of wooden locks, none having been erected in this state; and that his estimates were formed on the reports of Mr. Geddes and other public officers in relation to the cost of such locks. And it appears from the report of Mr. Geddes, made on the 4th of March, 1826, to the canal commissioners, and by them transmitted to the Assembly of that year, that that experienced engineer estimated the cost of wooden locks at only \$150 per foot lift. [Assembly Journal of 1826, appendix F. page 8 to 14.] The petitioner, therefore, had the best reason to suppose when he contracted at an average of \$177 per foot lift, that he had secured a fair price for the work to be performed.

The petitioner also states, that other persons who entered into contracts for the construction of locks on this canal, at prices even higher than those specified in his contract, either subsequently abandoned the work, or received a much large amount for its execution

than the allowances made to him; and that one of those contractors, who was to receive \$825 per foot lift, alleged that even that sum was insufficient to cover the cost of the works, and applied to the canal board for an extra allowance. Indeed, there seems to be no doubt, as well from the statement of the engineers as from other documents submitted to the committee, that the prices specified in the contract were altogether inadequate; and if the petitioner shall be able to prove to the satisfaction of the canal board, that these inadequate prices were inserted in the contract through want of information, not only on the part of the contractor, but of the engineer himself, it would seem to the committee that the petitioner ought to be indemnified in this particular, for the *unfavorable terms* of his contract. If the state, by its public agents, contributed to produce the erroneous opinions entertained by the petitioner in regard to the cost of these works, and if the petitioner, under the influence of those opinions, entered into the contract, is he not fairly entitled to indemnity?

The price agreed to be paid by the contract for excavating the lock-pits, was 20 cents per yard, excepting 200 yards in lock-pit No. 6, for which 75 cents was to be paid. The total number of yards was 11,170, which at the contract price amounted to \$2,234.

By the statement of Messrs. Thomas and Dennis it appears that a fair price for excavating the lock-pits, would have been on an average, about 43 cents per yard—amounting in the whole to \$4,660.50 and making a difference between the contract price and a fair price, of \$2,425.60. This estimate is also over and above the extra allowances previously reported by the engineer. The right of the petitioner to call upon the legislature to indemnify him against the loss resulting from the unfavorable terms of his contract, is not so clear in this particular as in the former case. The disparity, however, between the sum which in the judgment of the engineer would have been a fair price, and that specified in the contract, is so great, that the committee are inclined to the opinion that some allowance should be made to the petitioner: and without directing the canal board on this point, they have given them a discretion to do justice in the premises.

II. It has already been stated, that the extra allowances made in February, 1828, and amounting to \$6,685 were to a considerable extent prospective and conjectural. This will appear to have been the

case, from the note subjoined to Mr. Dennis's report, from the terms of the report itself, and from the statement of the canal board.

If the estimate and allowance of 1828 had only applied to expenses incurred prior to that date, there would have been no ground on which the Legislature could have directed the canal board to review them. But in the present case, a great part of these allowances, was founded on estimates made in advance; and whilst it would be improper, in ordinary cases, to direct a re-examination of a decision made on full evidence, and when all the facts were, or might have been, laid before the proper tribunal; it would be manifestly unjust, to hold the party to a decision made on prospective calculations and estimates, which prove to be wholly insufficient to meet the expenses against which they were intended to provide.

For the purpose of shewing that the allowances made in 1828, were altogether inadequate, the petitioner has laid before the committee, several affidavits, which, though taken extra-judicially, have been referred to, as sufficiently authentic for the purposes of the present inquiry.

Without entering into detail, one or two points may be selected. In the estimate of February, 1828, the sum of \$250 was allowed for each lock, for extra timber and plank required by variations from the model. The estimate on which this allowance was made, was altogether conjectural, and it would seem from the affidavits, entirely inadequate.

William R. Kelsey, deposes, that he is a carpenter and joiner, and was in the employ of the petitioner; that a model of a wooden lock was prepared by the engineer, at the time of the contract, and also a bill of the timber, amounting to nearly 10,000 feet for each lock of ten feet lift; that the alterations subsequently made by the engineer, in the plan of the locks, required an increased quantity of timber, and rendered useless a large quantity of timber previously got out, &c.; that after the completion of the locks, the witness and *Aaron Davis*, also a carpenter, in the employ of the petitioner, made actual measurements, from which they ascertained, that at least 15,000 feet of timber were used in the construction of each lock; and that a fair compensation for laying such timber in the locks, would be \$140 per thousand feet.

Aaron Davis, another master carpenter, gives substantially the same statement.

If these affidavits are to be relied on, the quantity of timber required for each lock, in consequence of new directions given by the engineer, amounted to \$700 per lock, besides the increased expense in plank, nails, spikes, &c. and the waste of timber and plank before provided. The engineer's estimate for the whole of these extra expenses was only \$250 per lock—making a difference in this branch of the extra expenses, of \$3,150, between the allowance recommended by the engineer and adopted by the canal board, and the actual amount of those expenses.

Lock-pit No. 9 was one of those in regard to which the allowance of February, 1828, was chiefly conjectural. Aware that difficulties unforeseen at the time the contract was made, and most serious in their character, were to be encountered in the excavation of this lock-pit, Mr. Dennis recommended, and the board sanctioned an extra allowance of \$1,440. [See Mr. Dennis's estimate.] But from the affidavit of Samuel Stowell, who superintended the laborers and teams employed by the petitioner, it would seem that this large allowance was altogether too small. That part of his affidavit is in the following words: "That lock-pit No. 9 was excavated with peculiar and arduous labor, the rock being flint rock, and of the hardest kind ever known in this part of the country. The nature of this rock was such as to require a great expense in sharpening picks, drills and other tools, and only a very small quantity of it would yield to a blast of powder. The deponent states from his own knowledge, that with men of experience in canalling, blasting rocks, &c. some part of the excavation of this rock, cost \$10 per cubic yard; and in his opinion the number of yards of this quality was about one hundred. The residue of the rock excavation in this lock was not so hard. The whole rock excavation was about one half the quantity of the whole pit. The water, also, in this lockpit was very troublesome, and required the labor of six men per day for seventeen weeks to relieve the pit of it so that the work of excavation could proceed. That, after the foundation was completed and laid down, and one tier of side timbers laid all round, there came a sudden flood and filled the lock full, so that the water was seven feet deep in it. This sudden influx of water floated the bottom timbers and plank, and the whole of the timbers and foundation had to be taken up, the water bailed out, and then the whole replaced—which caused in his opinion an extra expense of at least five hundred dollars. Every exertion during the rains, was used to prevent

the floating of the foundation, but without success, as no effort could prevent the waters from breaking in."

Other particulars might be enumerated, but it is believed that enough has been shown to justify the conclusion, that this is a case in which the canal board should be authorised to re-examine the allowances already made ; and though it would have been proper to confine this re-examination to that part of the allowances which was intended to cover expenses to be incurred and services to be performed after February, 1828, if that part could be separated from the residue, yet as no such separation is practicable, the whole allowance made in February, 1828, must be ordered to be reviewed, to do justice to the petitioner.

III. As to the claims for extra allowances for unforeseen difficulties not intended to be covered by the allowance of February, 1828, it is not necessary to enter into detail, inasmuch as the canal board have already the power to act, and have offered to act thereon. The only question will be as to the amount which should be allowed ; and if, as the petitioner alleges, the sum reported by the engineer is inadequate, he will have the opportunity of establishing the fact at the proper time, before the board.

There are some considerations of a general nature applicable to each branch of this case. It appears from the annual report of the canal commissioners made in January, 1828, that most of the persons who contracted at the same time with the petitioner, subsequently abandoned their contracts, in consequence of the unfavorable terms on which they had been made. [Assembly Journal of 1828, p. 252.] The petitioner, however, persevered in his undertaking, and faithfully performed all that duty or good faith required, with the certainty of encountering a heavy loss, and with very little prospect of ultimate indemnity. This consideration has had some weight with the committee, and they are persuaded will not be disregarded by the house.

It appears from the statements submitted to the committee, that the petitioner has received for the whole work done by him, including about \$6,000 received for embankment, &c. and not the subject of controversy, about \$24,000. Under their present powers, the canal board can only allow, in addition to this sum, the extra expenses included in the last report of the engineer, and estimated by him

at about \$800—making in the whole, \$24,800. But it is stated in the affidavit of *Samuel Stowell*, who superintended the laborers and teams, and of *Aaron Davis*, the master carpenter, that they have calculated the day's work, from their own pay-rolls, and from the rolls and accounts of others, and that they have ascertained that upwards of 22,000 days' work have been applied to the construction of the locks, &c. the actual cost of which, including pay and rations, they estimate at one dollar per day. This is exclusive of various other expenses, and of timber, plank and all other materials. Mr. Davis also states in his affidavit, that he has calculated the actual expense of the whole work, (and he gives the details of such calculation,) at \$45,152.50. The deponents already named, and several others, whose affidavits it has not been thought necessary to refer to more particularly, concur in stating, that the whole work was performed with the strictest regard to economy, and with as little expense as circumstances permitted.

If these statements and calculations are correct, the loss of Mr. Tillman, unless some relief shall be afforded by the Legislature, will exceed \$20,000. The acting canal commissioner has repeatedly expressed the opinion, that the petitioner has sustained a loss, though he adds, in his report, "not by any means to the amount set forth in his petition."

As the allowances to be made under the bill reported by the committee, if it shall be adopted by the Legislature, must depend on the proofs to be adduced before the canal board, the committee do not deem it material to inquire into the precise amount of the actual loss to which the petitioner will be exposed, if the powers of the board are not enlarged.

It is probable that he will be a loser in any event; and if no relief is afforded to him by the Legislature, it is certain that his loss will be severe. But notwithstanding its severity, the committee would have deemed it inexpedient to report a bill in his behalf, if they had supposed that by doing so, they would establish a precedent, calculated to require or to invite, heavy claims upon the treasury. The peculiar circumstances of this case, can hardly ever occur in any other; and even if they should, is it too much to say, that the obligations which would flow from them ought to be fulfilled?

In accordance with the views expressed in this report, the committee have prepared, and ask leave to report, a bill, empowering the canal board to hear, and decide upon, the case of the petitioner.

All which is respectfully submitted.

Copy of Certificate of Messrs. Thomas and Dennis, dated February 6th, 1829.

It is our opinion that a fair price for Brown & Tillman's locks, would have been as follows :

\$260 00	per foot for.....	No. 3.
260 00	do	4.
230 00	do	5.
230 00	do	6.
225 00	do	7.
250 00	do	9.
250 00	do	10.

The preceding estimate excludes all the items of expense for which estimates of extra allowance have been submitted by us heretofore.

DAVID THOMAS,
NOAH DENNIS.

W. C. BOUCK, Canal Comm'r.

I can give thee at any time, if proper, some of the considerations on which the above opinion of D. Thomas and myself is founded. And for thy own satisfaction in the case, I would refer thee to Chamberlain and McLeod. With regard to the pits, I should think, that as in the above estimate, over and above the extra allowances which have been recommended by me, a fair contract price would have been,

30 cts.	per yard for	No. 3,
30 "	do	4,
75 "	do	5,
50 "	do	6,
50 "	do	7,
40 "	do	9,
25 "	do	10.

2d Mo. 6, 1829.

[The estimate of Mr. Dennis on which the allowance of \$6,685, made on the 19th of February, 1828, was founded, will be found, together with the report of the canal board, in Assembly documents No. 240.]

IN SENATE,

March 24, 1830.

REPORT

Of the Committee on the Judiciary, on the petition of the Trustees of the Schenando Cotton Manufactory.

Mr. Benton, from the committee on the judiciary, to which was referred the petition of the trustees of the Schenando cotton manufactory, praying for the passage of an act authorising them to sell the real estate belonging to the said corporation, and also the bill reported by the standing committee on manufactures,

REPORTED AS FOLLOWS, TO WIT :

That the petition sets forth, that owing to the pressure of the times and the reduced price of home manufactures, it is conceived to be for the interest of the stockholders of the corporation, that the real and personal estate of the company should be sold; and the proceeds, after paying the debts due, divided among the several stockholders.

The bill reported by the committee on manufactures, provides for the sale of *all* the real estate of the corporation, and a distribution of the residue of the proceeds of the sale among the stockholders, after paying the debts due from the corporation. An affidavit of the due publication of the notice in the state paper, of the present application, accompanies the petition, and none other. We are not informed in what manner this corporation was created, whether by

special act of the legislature, or under the "act relative to incorporations for manufacturing purposes." There are no documents or papers showing the situation of the corporation, whether solvent or otherwise; the amount of the capital stock, the amount actually paid in, and the sums due, if any, from the several stockholders on account of their stock. The facts stated in the petition are not sworn to, or in any manner supported by evidence other than the signatures of three trustees.

It is believed that the petitioners seek, and the bill contemplates, a virtual dissolution of this corporation. The *right* in the legislature, to grant the prayer of the petition, as contemplated by the bill, cannot be doubted, but the wisdom and policy of doing so is not quite so clear. There are many reasons which might be urged why this course should not be adopted, to effect a dissolution of an existing corporation; but as most of them will be apparent to the Senate on reference to statutory provisions now in force, it is not considered necessary here to advert to them particularly.

The provisions of article three, of title four, chapter eight, of the third part of the Revised Statutes [vol. 2 page 467] give the court of chancery full power, on application by a corporation, to dissolve the same, in cases where insolvency exists, or for any other cause deemed beneficial to the stockholders.

It is very clear that legislation upon this subject is not necessary in order to enable the corporation to dispose of its property, although it may be an easy and convenient method of enabling it to close up its concerns and wind up its business; but in what manner and to what extent the rights and interests of the stockholders and creditors may be affected by this proceeding, cannot easily be ascertained.

The committee are clearly of opinion that an insolvent corporation should never be permitted to close up its business by the method or means prescribed by the bill submitted to them, because the creditors cannot have such convenient and effectual means of protection secured to them as by the provisions of the Revised Statutes, without subjecting the trustees or other officers to the supervision of some competent judicial tribunal.

The committee have considered this reference as one requiring them to state to the Senate what were the existing laws upon the subject embraced in the bill, rather than as calling upon them to express any distinct opinion for or against the passage of the bill ; the propriety and expediency of its passage is therefore submitted to the consideration of the Senate.

IN ASSEMBLY,

March 17, 1830.

REPORT

Of the Select Committee, relative to an alteration of the law in respect to foreign poor, &c.

Mr. Russell, from the select committee to whom was referred the petition of the supervisors of the county of Washington, praying a revision of the law relative to the importation of foreign poor, and a direct appropriation to enable them to carry into effect the object of the petitioners,

REPORTED—

The petitioners represent that the masters of vessels and other craft navigating the waters of Lake Champlain, are in the habit of transporting from the province of Lower Canada, and landing at and near Whitehall, in the said county, large numbers of emigrants from foreign countries, exhausted with the fatigues and worn out by the deprivations of a long voyage, whose pecuniary resources are wholly exhausted, and in most instances, with numerous and helpless families, and leaving them the objects of charity, by which the county has become burdened with paupers. That when attempts have been made to enforce the penalties of the law against persons importing them, the want of intelligence, in some instances, and integrity in others of these miserable wanderers, have rendered the efforts of the constituted authorities, unavailing.

The representations of the petitioners, the committee have no doubt, are founded on truth; and from the depressed situation of the laboring classes in the European countries, and their hope of ameliorating their condition by emigrating to the United States,

there is great reason to apprehend an increase rather than a diminution of the burdens complained of. But inasmuch as the ordinary resources of the state are so circumstanced, that a direct appropriation cannot reasonably be expected, the committee are of opinion that the remedy must be effected, if at all, by other means ; and have prepared a bill for that purpose, and directed their chairman to ask leave to introduce the same.

No. 333.

IN SENATE,

March 24, 1830.

MEMORIAL

Of the New-York State Colonization Society.

To the Honorable the Legislature of the State of New-York.

The managers of the New-York State Colonization Society beg leave to present to the Legislature the accompanying memorial, which will be found to contain a lucid exposition of the principles and objects of the American Colonization Society, and of its claims to public confidence and support.

Without attempting to repeat or to enforce the powerful appeals contained in the document herewith transmitted, your memorialists content themselves with stating, that, in their judgment, the subject is well entitled to the deliberate consideration of the Legislature. Although we are, as yet, happily exempt from most of the evils which may be expected to result from the existence of a large colored population among us, either as slaves or as freemen; still it is impossible for the people of this State not to perceive, that the great numerical strength of this class of our population, and their rapid increase, are matters of just alarm to every part of the union.

The great purpose of the Colonization Society is, by removing the free people of color, and especially from the southern states, to mitigate the evils under which the nation is suffering, and to avert those which threaten to overwhelm it; and, at the same time, by establishing them on the coast of Africa, to place within their reach the means of happiness, to aid in suppressing the slave trade, and to diffuse among the barbarous inhabitants of that ill-fated portion of the globe, the lights of civilization and the blessings of christianity.

Interfering, in no degree, with the internal policy of the States; making no appeals to sectional feeling; and using no language but that of reason and humanity; the Society has had the good fortune to secure the favorable opinions of a great portion of the intelligent and thinking people of the south and of the east, of the north and of the west. The Legislatures of the States of Virginia, Maryland, Tennessee, New-Jersey, Ohio, Kentucky, Connecticut, Delaware, Vermont, and Pennsylvania, have already expressed their approbation of its objects; and with a single exception, have recommended it to the patronage of Congress.

Independently of the direct good it has accomplished, this Society has been productive of many collateral advantages. Being composed almost exclusively of inhabitants of the south and west, it exerts a benign influence on those portions of the union, in reference to the condition of the slaves and the continuance of slavery; whilst it furnishes the only common ground on which the delicate questions connected with the colored population in our country can be approached without danger, or discussed without collision. If it were only for the purpose of perpetuating these advantages, the continuance of the Society would be an object of great moment. But when we look at its results as already exhibited in the history of its operations; when we consider the influence it may be expected to exert, if fostered in proportion to its merits, on the preservation of one continent from evils the most alarming, and on the elevation of another to blessings the most important, its continuance and success may well be deemed to be identified with the best interests of the human race.

Impressed with these sentiments, the undersigned respectfully invite to the accompanying memorial, the serious consideration of the Legislature; and they indulge the hope that its countenance and co-operation will not be withheld.

JOHN SAVAGE, *President.*

B. F. BUTLER,

H. BLEECKER,

JOHN WILLARD,

JABEZ D. HAMMOND,

CHARLES R. WEBSTER,

} *Managers.*

RICH'D VARICK DE WITT, *Secretary,*

Of the N. Y. State Colonization Society.

Dated Albany, March 22, 1830.

MEMORIAL

Of the American Colonization Society.

*To the Honorable the Senate, and the House of Representatives of
the State of New-York.*

The American Colonization Society has been enabled, by the liberal patronage of their fellow-citizens of the several States, (and it numbers among these friends and contributors many of the citizens of New-York,) to explore the coast of Africa, to find an asylum to which the free coloured population of our country might be safely removed. The annual reports of their proceedings (accompanying this memorial) will show what their labours have effected.

These labours, they have now the happiness of declaring, have, by the favour of Providence, been conducted to a successful issue : And they now present themselves before you, with the power of showing, that all that could reasonably be expected to be done by their instrumentality, has happily been accomplished.

A colony of free coloured persons from the United States, amounting to several hundred, has been planted on one of the most eligible situations upon the coast of Africa. The difficulties and dangers necessarily attendant upon such enterprises, have been overcome : and they are now in the peaceful occupation and cultivation of a fertile and extensive territory, possessing every advantage for their own comfortable subsistence, and for carrying on an advantageous commerce with other parts of the world.

Every circumstance calculated to promote a rapid increase of population, is to be found connected with this settlement. The vast mass of inhabitants of this description in our country ; their depressed and unfortunate condition among us ; the continually decreasing expenses of transportation ; their own desires to seek a home, with their brethren, in the land of their fathers ; and the obvious interest of every portion of our community to aid and encourage them, give every reason to expect that emigration to Montserado will only be limited by the capacity of the country to receive and subsist the colonists.

And this capacity is almost unlimited—a climate suited to the descendants of Africa, a soil adapted to their wants, producing two crops of corn within the year, and rice almost without cultivation; whose forests abound in cotton, coffee, dye-woods, spices, and every tropical production: and such a country thus abounding in resources for the subsistence of man, destitute of men, depopulated by the slave trade, must invite, must admit and provide for a more rapidly increasing population than has perhaps ever yet been witnessed.

Such is the situation, and such are the prospects of the establishment your memorialists have been enabled to make. A private association of individuals can do little more. The work now becomes too vast for their powers, too important to be trusted to any hands, save those, to whom, as guardians of the public, the great interests of the public are committed.

Your memorialists have long looked forward to the period that has now arrived, and deliberately considered the duties it would impose upon them. In the discharge of these duties, they now appear before you, and make their appeal with confidence to the Legislature of a State, many of whose citizens have already evinced their readiness to promote the success of the cause in which they have engaged.

They are already prepared to lay before the Congress of the United States, the work they have effected; and to call upon them, as representing the great body of the American nation, to take into their own hands the consummation of an object worthy of national patronage.

Whether the General Government of the United States will consider this a concern of national interest, to which the power and resources of the nation are to be applied, or as more proper for the consideration of the States in their several capacities, it is not for your memorialists to determine. Their duty is to place it before all, who have the power to accomplish it; and to trust that the wisdom and patriotism of those to whom it is committed, will devise the most proper and effectual means for its success.

Should the State of New York feel an interest in this great object, either as it affects her own prosperity or that of the Union, her able representatives in the national councils can speak her wishes: and should it become necessary for the several States to provide the means for its accomplishment, she can then apply her own power

and resources in its behalf, to such an extent and in such a way as her interest and duty may demand.

It is with these views and for this purpose, that the American Colonization Society now proceeds, in the course of its duties, to solicit from the several states, their solemn consideration of this most interesting subject. They hope that in doing so, they may be excused for endeavoring to offer some suggestions, applicable to the difference in situation and circumstances of the several States of the union, in relation to their colored population.

The United States contain, dispersed in various proportions among them, upwards of two hundred and fifty thousand free colored inhabitants. That their removal to the colony now established in Africa, would be a blessing to themselves and a relief to us, is too obvious to our feelings and interests to require argument. It is also evident that, notwithstanding all the impediments to emancipation in the slave States, and all the disadvantages attending such a condition, a great addition is annually made to this number.

If the colony at Liberia becomes capable of drawing off, annually, portions of this population from the various states, so that it gradually diminishes and finally disappears from among them; and if those who hereafter become free, are also thus disposed of; will not these States have attained, by this disincumbrance, a great moral and political benefit, fully justifying even a considerable expenditure of their funds?

The amount of that expenditure may even now be calculated, though it is certain that it will fall below any estimate that may be predicated upon the present cost of transportation.

The first emigrants cost the Society about fifty dollars each; the last, about twenty. And when the vessels in which they embark, can return freighted with the African products which the industry and enterprise of the colonists will collect, it is certain that the mere subsistence during the passage and for a few months afterwards, in the cheapest country upon earth, will constitute the sole expense.

And when this description of persons see, as they soon must, the great advantages of emigration, may not vast numbers of them be expected to provide for themselves the means of transportation? Who can doubt this, that considers the accession to the population

of this country, annually made by the arrival among us, of the most destitute classes of foreigners, multitudes of whom only pay for their passage by their labor?

Those states, then, that at present labor under the disadvantages of such a population, can obtain relief, and at an expense not beyond its value. And if this was all—if a wretched, outcast people should be thus made happy, and not confining the blessings to themselves, should become a light to that land of darkness, to which we owe such a retribution for past wrongs; if a work thus beneficent to man and acceptable to God, can be made from materials not only useless but injurious where they are, there would be motive enough excited by patriotism, benevolence, and religion, to encourage us to such an effort.

In the course of its endeavors to interest the citizens of the different states in favor of this object, the Society has had to encounter, and in some degree still has to encounter, an opposition arising from the most contradictory objections.

They have been denounced by some, as fanatical and visionary innovators, pursuing, without regard to means or consequences, an object destructive of the rights of property, and dangerous to the public peace; while others have looked upon them as a mercenary and selfish association, which, regarding the free people of color as impediments to the profitable use of their slave property, sought, by removing it, to rivet the chains of slavery.

The Society would conciliate, if possible, these opposing opponents. They doubt not the sincerity and good intentions of both of them, and trust that time and experience will do what their assurances may now be unable to effect;—remove the apprehensions of the one, and the suspicions of the other.

The sole object of the Society, as declared at its institution, and from which it can never be allowed to depart, is, “to remove, with their own consent, to the coast of Africa, the free coloured population now existing in the United States, and such as hereafter may become free.” That such a removal is practicable, and would be highly beneficial, both to the subjects of it and to ourselves, seems now scarcely to admit of a question. What its effects might be in relation to another class of our coloured population, and those who lawfully hold them as their property, must of course be more doubt-

ful. But that such effects would be injurious to either, seems by no means probable.

That it would tend to mitigate the evils of slavery, and offer facilities and inducements to voluntary emancipation, seems almost certain: and it cannot be doubted but that this may be done without impairing the rights of property, or the safety of society. Whatever influence, then, it may have upon the question of slavery, must be a beneficial influence, and cannot therefore be considered as an objection against it. That every measure which either directly or indirectly affects this delicate question of slavery, should be managed with the greatest care and circumspection, must be conceded.

But it cannot be reasonable to insist that every measure, however important and beneficial, is to be denounced, because it may in its consequences lead to a removal of the obstructions to voluntary emancipation, and act favourably upon the state of slavery.

In pursuing their object, therefore, (although such consequences may result from a successful prosecution of it,) the Society cannot be justly charged with aiming to disturb the rights of property, or the peace of society.

Your memorialists refer with confidence to the course they have pursued in the prosecution of their object, for nine years past, to shew that it is possible, without danger or alarm, to carry on such an operation, notwithstanding its supposed relation to the subject of slavery; and that they have not been regardless, in any of their measures, of what was due to the state of society in which they live.

They are themselves chiefly slaveholders, and live with all the ties of life binding them to a slaveholding community. They know when to speak and when to forbear, upon topics connected with this painful and difficult subject. They put forth no passionate appeals before the public; seek to excite no feeling; and avoid, with the most sedulous care, every measure that would endanger the public tranquility. They could have obtained friends and resources by such appeals; but they seek nothing at any hazard, and prefer that their work should advance slowly, or even stand still for a season, rather than that it should make its way by any means calculated to excite dangerous discontents in one class, or just apprehensions in the other.

Yet on such occasions as the present, when they who are delegated to watch over the public welfare, are to be invited to examine and consider this great subject in all its connections, it cannot be inconsistent with the Society's declared object, or any of its duties, to endeavour to shew that nothing injurious or dangerous need be apprehended, either from the measure itself, or any of its consequences.

If it be said that this subject of slavery is to be so respected, that no purposes of public benefit, no matter how remotely connected with it, or how favourably they may operate upon it, must ever be touched even with the greatest discretion; it may be asked, what is to happen if all matters thus related to it are never to be touched? If we could prevent the utterance of a word, or the rising of a thought that might call up this fearful subject forever, what would be our gain from this insensibility?

We could gain nothing if we could stifle thought and inquiry; but thought and inquiry, and efforts upon such subjects, in such an age as this, are not to be stifled. Who does not see in the times in which we live, when a new impulse seems to be awakened in man, and just conceptions of his rights and of his duties are calling forth all the energies of his nature, that there is nothing left but to guide with a steady hand the spirit of improvement, and direct its operations to such results as may conduce to the general welfare?

If discreet and prudent measures are to be forborne, because their consequences may lead to a diminution of the evils of slavery, what shall restrain the inconsiderate, dangerous, and direct efforts that may be made upon the subject itself? And if, therefore, it can neither be let alone, nor rashly dealt with, what remains but that those who feel and understand it; those, who from habit, situation and interest, know all its bearings and connections, should be allowed to prosecute a useful object, although thus connected, and conduct it with the care and caution it requires? And if its consequences shall lead to the supposed conclusion—shall open a way, without violating the rights of any, to deliver us from a still greater evil—is it an objection that can be urged against its prosecution?

To those who charge the Society with the contrary motive of designing to perpetuate slavery, they would beg leave to say, that it is not reasonable to infer such purpose, from the circumstance of the Society's confining its operations to the free people of colour. The

managers could, with no propriety, depart from their original and avowed purpose, and make emancipation their object.

They hope that more correct views are now entertained throughout our country, of the manner in which all subjects, in any way connected with slavery, should be considered and conducted.

It seems now to be admitted, that whatever has any bearing upon that question, must be managed with the utmost consideration ; that the peace and order of society must not be endangered by indiscreet and ill-timed efforts to promote emancipation ; and that a true regard should be manifested to the feelings and the fears, and even the prejudices of those whose co-operation is essential.

The managers of the Society perceive with gratification, that these considerations begin to be felt and appreciated in those States where slavery is only heard of, and where perhaps the perplexities of its operations upon society, and the necessities it creates and imposes, have not been generally understood.

From the situation of the Society, and its constant intercourse with the citizens of some of the slave States, they have had abundant opportunities of witnessing the progress of opinion upon this subject, and of accurately knowing its present state. They are convinced that there are now hundreds of masters, who are so only from necessity, who are prepared to manumit their slaves, whenever means are provided for their reception and support in the colony ; and they believe that this disposition, even without any legislative enactments, will increase far more rapidly, than the means for its gratification can be afforded.

They trust, therefore, that the object which they have endeavoured to place before the American people, and which is now proved to be attainable, will be found interesting to every portion of our country ; and that no apprehensions of any evil consequences to result from it, can be reasonably entertained.

To those, therefore, whom New-York has selected as the guardians of her interests, your memorialists beg leave to commit this important subject ; trusting that their wisdom will devise the means by which the work they have thus far accomplished, may be made to promote those interests, and the common welfare of our country.

JAMES LAURIE,
President Board of Managers.

R. R. GURLEY, *Secretary.*
[No. 333.]

IN SENATE,

March 26, 1830.

PETITION

Of Edmond C. Genet, against usurped corporate privileges, and praying for directions to the Attorney-General, &c.

*To the Honorable the Legislature of the State of New-York,
in Senate and Assembly convened.*

The memorial of Edmond Charles Genet,

RESPECTFULLY SHEWETH :

That in a free country, every citizen being bound, as far as his abilities extend, to guard and defend the laws under which he enjoys the blessings of a free representative government, your memorialist, encouraged by the indulgence with which former Legislatures had suffered him to communicate to them his views on several subjects of political economy, and particularly on a more equal system of taxation, embracing the personal and real property in the actual possession of the incorporated monied institutions of this State, and subsequently on the banking privileges usurped by other companies, contrary to the condition and design of their grant; has deemed it, since, his further duty to ascertain, by way of experiment, if, in practice, the laws passed on these two important subjects had been equally successful in their application. For that purpose, your memorialist consulted the assessment rolls of the city of New-York; and, to his great satisfaction, found, that by taxing the banking capitals where they were legally presumed to be, and not where they did not exist legally, and could never be found by the assessors, that is to say, in the hands of the stockholders, who only hold an evidence of reversionary interest in the incorporated capitals,—the real es-

state in that city, and others, had been relieved upon an average of about fifty per cent, and the income of the State considerably increased. But with respect to the usurped banking privileges, the result of the law seems as yet to be uncertain, and to require legislative aid to be carried into effect. The following statement of facts will prove this assertion :

The laws lately revised by the Legislature, having provided, (chapter sixteenth, article third, "Of the general powers, privileges and liabilities of incorporations,") "That no corporation *created or to be created*, and not expressly incorporated for banking purposes, shall, by any implication or construction, be deemed to possess the power of discounting bills, notes or other evidences of debt ; receiving deposits ; of buying gold and silver bullion, or foreign coins ; of buying and selling bills of exchange ; or of issuing bills, notes or other evidences of debt, upon loan, or for circulation as money."

And the said revised laws having further provided for the application and execution of the above statutes, (article second, title second, chapter ninth, section thirty-ninth,) "That an information in the nature of *quo warranto*, may be filed by the attorney-general, on leave granted, against any corporate body, whenever such corporation shall, 1. Offend against any of the act or acts creating, altering, or renewing such corporations ; 2. Violate the provisions of any law, by which such corporation shall have forfeited its charter by *misuser* ; 3. Whenever it shall have forfeited its privileges by *non user* ; 4. Whenever it shall have done, or omitted, any acts which amount to a surrender of its corporate rights, privileges and franchises ; 5. Whenever it shall exercise any franchise or privilege not conferred upon it by law." And it is further ordained, that "it shall be the duty of the said attorney-general, to file such information in every instance in which he shall have good reason to believe that the same can be established by proof."

Your memorialist, satisfied that these laws were as clear and precise as their execution would be infallible, did not hesitate, on the 14th day of April last, to present a complaint against the Manhattan Company of New-York, to the Attorney-General, containing the following charges, to which he was legally qualified :

1. That the said company, since it was incorporated, on the 2d day of April, 1799, for the only purpose and design of supplying the

city of New-York with pure and wholesome water, did assume the banking privileges, of its own authority, in defiance of the laws of the land, and the limitation and design of its charter.

2. That the real and only design of the said charter, had not been fulfilled.

3. That the said company had not only illegally assumed the banking powers, but conducted its banking operations in a manner repugnant to the law of this State repressing usury.

4. That the said company had not only made itself liable to the forfeiture of its charter by the above offences, but had also forfeited by *non user*, the banking privileges granted subsequently to the said institution, on the 25th day of March, 1808; which law, by a bountiful indulgence, drawing a veil on the above transgressions and usurpations of the said company, had granted it, for thirty years only, the banking privileges, on the express condition that it should previously transfer forever to the corporation of the city of New-York, all its water rights and water works; a condition *sine qua non*, which the said company has never fulfilled.

Your memorialist, in order to support and substantiate these four charges, further represented in his said complaint to the Attorney-General :

In reference to the first charge, that the charter of the Manhattan Company offered by itself conclusive evidence that the banking powers had not been granted to that institution, either expressly or impliedly, or constructively; inasmuch as the very clause, from the tenor of which that company has pretended to enjoy those powers, is the clause authorising it "*to use its surplus capital in any manner not incompatible with the constitution and law of this State;*" and that the said clause, legally and fairly interpreted, as it undoubtedly was at the time by the Legislature, denies absolutely the exercise of those powers.

Because, by the State constitution of 1777, section 35, "Such parts of the common and statute law of Great Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the nineteenth day of April in the year of our Lord 1775, were to continue the law of the State, subject to such alterations and provisions as the Legislature of the State should from time to time make concerning the same."

Because, at the time the charter of the Manhattan Company was granted, the law of England, as reported by Blackstone, book 1, chapter 23, and not altered by any statutes of the colony and state of New-York, was, "That invasions and usurpations of rights not explicitly granted by a charter, are sufficient to dissolve the body incorporated; and that it is the prerogative of the king, after his attorney-general has prosecuted under a quo warranto the delinquents, and they have been found guilty by the king's bench, not only to determine by dissolution the life and duration of the corporation, if it is to endure for a limited time or forever, but also to take her property by reversion, as in the case of every other grant; the debts of the corporation, either to or from it, being totally extinguished by the dissolution."

And because, the custom of the State, which has never varied since its first organization in 1777, and has acquired force of law, has uniformly been, to subject all the incorporations designed for banking purposes, to certain fundamental rules, limiting their duration or political life; regulating their discounts below the legal interest of money, in order to keep them within the bounds of the statute concerning the legal interest of money; and finally, imposing upon those institutions all prudential obligations and duties which public safety and public credit demand. All which requisites are as indispensable to constitute an incorporated bank, as the various parts of an animal to compose his body.

In reference to the second charge: that the president and directors of the Manhattan Company had not fulfilled the only object for which their charter was granted, namely, the supplying the city of New-York with pure and wholesome water, your memorialist stated, that from his own experience and observations, which could be corroborated by the most numerous testimonies, it could be proved, that the water supplied by the Manhattan Company is neither in proportion of the wants of the city, nor pure nor wholesome: the source, from which the suction of a single steam engine raises the scanty supply of water distributed to a limited proportion of the inhabitants, being injudiciously located in the vicinity of an old marshy repository of filth and putrefaction, formerly called the Collect, now converted into a public sewer, receiving the discharge of innumerable gutters and sinks: and that the citizens who have any regard for their own health, and the health of their families or boarders, are obliged, at a great expense, to procure water from remote springs. The want of

water for extinguishing fires, and irrigating certain streets, is also very much felt; and has compelled the corporation to construct immense cisterns in various parts of the city, to replenish imperfectly that deficiency.

In reference to the third charge, that the president and directors of the Manhattan company have conducted their banking operations in a manner incompatible with the law of this state, your memorialist offered to prove, 1st. That, on two suits which came on trial before the circuit court in the city of New-York, Samuel Flewelling, who, during a long period of years, had been cashier of the Manhattan company, had legally proved, that one of the by-laws of the said company had been, to retain interest at the rate of seven per cent per annum, on the discount of promissory notes above seventy days, long before the indulgence of loaning money, at that rate, by the banks, had been, by a private law, granted in 1813 to the bank of America, on loans at ninety days, and subsequently, to other incorporated banks, on loans above six months. 2d. That it was also proved, on the same trials, that the said company had made it a practice, by prescribing the terms of its discounts at sixty, seventy, or ninety days, to reduce the calendar year, which is our legal and constitutional year, to 360 days, instead of 365½, which two practices are *prima facie* usurious; because, as long as our statutes, limiting the legal interest of money at seven per cent per annum, are not altered, the bank discounts, to be within the statute, must not exceed six per cent per annum; as otherwise, if on a discount of one hundred dollars, at sixty or ninety days, seven per cent are retained, that interest is paid on ninety-three dollars, instead of one hundred; and because, again, if besides a retainer by way of discount, not only on mercantile acceptances, (specially and exclusively indulged in England, after a long resistance on the part of the court of chancery,) but also on continued loans, disguised under the form of accommodation notes, the year is made shorter five and a half days, the ratio of interest exacted, and the compound interest resulting from its cumulation, exceeds considerably, not only the six per cent per annum to which all the regular banking capitals are limited, but even the seven per cent regulated by law as the legal interest of money, and which no one is allowed to exceed, in any manner whatever, under the severest penalties enforced by our courts of law and equity.

In reference to the fourth charge, that the Manhattan company had forfeited the banking privileges which, for the first and only time, it had obtained by the law of the 25th of March, 1808, your memorialist stated to the Attorney-General, and begs leave here to repeat, the following facts, to wit: That the illustrious De Witt Clinton, whose patriotic mind was always engaged in promoting useful improvements, had warmly embraced, previously to the grant of the above mentioned law, the idea lately regenerated officially by the mayor of New-York, of substituting to the deleterious, hard, and paltry pittance of water, supplied to the city of New-York by the Manhattan company, an abundant influx of wholesome and soft water, drawn by the means of a canal or aqueduct, from the county of Westchester, into our great mercantile emporium. But as the unbounded exclusive water privileges of the Manhattan company were in the way, that statesman, who was at that time mayor of New-York, and one of the directors of the Manhattan company, set on foot, between the two corporations, a negotiation which terminated in a mutual application to the Legislature, the terms of which were, that a regular bank charter should be solicited for the Manhattan company, if it surrendered and assigned for ever, all its water works and water rights to the mayor, aldermen and common council of the city of New-York. Petitions were drawn and presented accordingly, on both sides; and agreeably to the prayers, the said law was passed on the 25th of March, 1808, with the two provisos, "that the banking powers should not take effect until the transfer aforesaid was perfected; and that the said banking liabilities should not extend above thirty years." But after that law had passed, a change having taken place in the board of directors of the Manhattan Company, it is a fact which your memorialist has ascertained by the most diligent searches at the offices of the clerk and comptroller of the corporation of New-York, that no step whatever had been taken by the Manhattan company, to comply with the provisos above mentioned.

These are the four legal grounds, on the strength of which your memorialist did enter his complaint, and in behalf of the people, petitioned the Attorney-General to file the said information, and obtain leave from the justices of the supreme court, during term, or any one of them, in vacation, by virtue of a writ of quo warranto, to give notice of such application to the Manhattan company.

But, on the 17th day of February last, the Attorney-General, after a very candid conference with your memorialist, on the subject of his said complaint, "considering the long and undisturbed exercise of the rights said to have been usurped by the Manhattan company, and various acts of the Legislature, in which that institution had been denominated as a bank, declined to institute, of his own accord, (*propria motu*,) proceedings against an incorporation which had hitherto been so kindly indulged;" and the said officer left your memorialist entirely at liberty to submit to your honorable body the whole matter of the complaint, and the motives of his forbearance.

The propriety of such a measure having received the sanction of that enlightened and prudent magistrate, your memorialist accordingly begs leave, most respectfully, to make the following remarks, in reply to his considerations.

In answer to the first consideration, established "on the long and undisturbed exercise of the rights said to be usurped by the Manhattan Company," your memorialist offers the Commentaries of Blackstone on the Laws of England, in which it will be found, (book 1, chapter 18, "Of corporations,") "That to constitute a right acquired by prescription," (or a long and undisturbed exercise,) "that right must have been exercised *for a time whereof the memory of man runneth not to the contrary*." And assuredly the mysterious means employed by designing men to deceive the Legislature on the secret object of the grant of the Manhattan charter in 1799, and to introduce into that instrument, by a *legerdemain*, the famous clause above mentioned, are too fresh in the recollection of many living men, to be considered as being of that high antiquity whereby legislative consent is presumed in law.

In answer to the consideration established "on the various acts of the Legislature, in which the Manhattan company is called a *bank*." Your memorialists having understood, from the Attorney-General, that he meant the laws re-inserted in the Revised Laws, title iv. of chapter 8, of part 1st, of that code, ordering, sec. 8, "that all monies directed by law to be deposited in the *Manhattan bank*, in the city of New-York, to the credit of the treasurer, shall remain in said *bank*, subject to be drawn for, as the same may be required, and that by sec. 9, the Comptroller may transfer the deposits in the *Manhattan bank*, from time to time to the bank or banks of the city of Albany," your memorialist observes,

1st. That it is evident by the date of the said laws, that they are subsequent to the law of the 25th of March, 1808, which law though it had effectually vested the banking privileges in the Manhattan company, was forfeited, *de facto*, by *non user*, and has remained an obsolete encumbrance among the laws of the state, from which circumstance it is to be inferred, that the Legislature, ignorant of the said forfeiture, and under the impression that the banking powers had effectually been granted by the law aforesaid, to the Manhattan company, and that the condition, *sine qua non* of the transfers of the water rights had been effected, has erroneously denominated that institution, as an incorporated regular bank; an error into which the late Comptroller of the state, has also fallen, by reporting the Manhattan company among the banks whose charters would soon expire, whilst the said company claims, on the contrary, *immortality*, and disdains to apply for a new charter.

2d. That the deposits ordered to be made by the Comptroller, at the "*Manhattan bank*," are only indicative of a trust, which might have been made in any other incorporation, without recognizing or vesting in that institution, the banking powers; and

3d. That the word *bank* does not imply exclusively an incorporated bank, but is generally applied to the place of safety, where dealers in money, called in Europe, *bankers*, keep their specie and valuable papers. That word derived from the Italian word *banco*, was in its origin, descriptive of a bench or counter, upon which, in old times, the Jews at the public fairs or markets, in Italy, exchanged foreign coins, for the coins of the places, where those fairs or markets were kept. Those Jews, (who in reality have been the first to invent promissory notes and bills of exchange, which they delivered to those merchants who deposited their money in their bank, to avoid being robbed on their return home, by the noble lords or thieves who infested, in those times, all Europe,) were tolerated by the governments, under which they exercised their traffic; but if they shaved too close, or if they failed, they were not only tied to a stake with a green cap on their head and whipped during three market days; but their *bank* or *bench* was effectually broken, by the public executioner; a punishment which was called *Banco-rotto* or bankrupt, after which they were turned out for ever from the market or fair; a rigid justice, which ought to reconcile all our bankers, with the comparative mildness of our late bank laws. However the word bank, as it appears in its past and present acceptation,

among the mercantile nations, means nothing more than a place where money is counted and kept ; and as a water company may as well as any other company or merchant, have such an accommodation and receive trusts, the mere denomination of *Manhattan bank*, and the *deposits* ordered to be made at that *bank*; do not seem to imply the recognition of powers, which by their nature, embracing the delegation of the sovereign right of creating and issuing a circulating medium, *must* be defined and regulated.

Your memorialist admits, that if the title of bank had been given in any part of the charter of the Manhattan company, it would imply that the design of the grantor, was, that the said company, should enjoy the banking privileges and habilities, subject notwithstanding, to the laws, customs and rules of the land, concerning public banks ; but as that name is used inadvertantly, in extraneous laws, regulating the duties of the Comptroller and Treasurer of the state, which the Legislature may at any time correct or repeal, such a misnomer, only proves what has already been presumed, that the error had originated, from the belief that the law of 1808 had been complied with, and was in vigor.

Your memorialist having attempted to substantiate, under a legal point of view, his charges against the Manhattan company, and endeavored to remove the doubts of the Attorney-General, begs further leave to offer to your honorable body, *political considerations*, which are not irrelevant to the subject of this memorial, and will shew that there are also reasons of sound state policy, to urge the Manhattan company, humbly to descend from its high immortal station, as a bank, to the mortal level of all the banks incorporated or to be incorporated by the state.

The journals of the convention which framed the present constitution of this state, leave no doubt on the intention of the said constituent body, to provide that the laws on the subject of private corporations should be uniform, without impairing the obligations of the charters already granted to the several corporations of this state.* And that it is in pursuance of that wise intention of our legislators that it has been enacted in the said constitution, chapter IX. that the assent of two-thirds of the members elect to each branch of the legislature shall be requisite to every bill creating, continuing, altering or renewing any body politic or corporation. The object of that law, explained by the debates and reports which preceded its adop-

* Vide Journals of the Convention of the State of New-York, p. 139.

tion, was evidently that, whenever the time of the duration of the old charter was over, they should be subjected, on their renewal, to an uniform system, which would impart to those institutions a symmetry of organization and a concordance of rules and actions, highly beneficial to public credit and national honor. But of what avail will that prudent provision be against an institution which arrogantly pretends to independence and eternity, and which, whilst all the regular banking institutions are compelled, by your energy, to bend the pride of their millions, under the caudian forks of the law, pursues her own course, her own laws, similar to those irregular and excentric celestial bodies which belong to no planetary system? The existence of such a body in any government, but especially in one established on the basis of equal rights and equal duties, is certainly discordant, inconsistent and incongruous, and ought, if practicable, to be new modelled and assimilated to the rest of the profession; exclusive favors and indulgences being always a just cause of jealousy and discontent. But there is another political reason, not less cogent, to rectify the aberrations of the Manhattan Company; it is the pernicious example of a successful invasion of rights, which ought never to be tolerated when discovered. Indeed it is a fact, well known of those who have observed with a philosophic eye the progress of these republics, that the corrupt banking intrigues which have disgraced our state, have originated from that first imposition, practised by artful men on the good faith and plain honesty of our representatives. Their triumph hath encouraged others to follow their example, and the most delusive language hath since frequently been used by the spirit of speculation, to extort by unnoticed implications, privileges which otherwise would have been refused. Let the tardy day of justice arrive, and similar offences will hereafter be avoided.

It may also be finally observed, that when an unfavorable balance of trade, which our unbounded luxuries continually increase, transfer into the hands of foreign capitalists our best private and public stocks, an *autocratic* monied institution, which, it is well known in New-York, has passed almost entirely into the hands of our commercial rivals, might easily be converted in times of political differences or war, into a powerful instrument, to influence by liberal accommodations, our printers and popular societies, our city and state elections; and exercise, secretly, deeds of vengeance and persecution against certain pointed victims, or against the public order, peace and harmony of a country which becomes inevitably, by its unparal-

leled prosperity, an object of jealousy and terror. History offers many examples of popular commotions having been secretly excited, and even wars having been declared, for *Machiavelian* motives of less magnitude.

Your memorialist being satisfied that in this information he has presented nothing but positive laws and law authorities, or facts of public notoriety, which could be corroborated by conclusive evidence, to show that the Manhattan Company hath usurped and unlawfully exercised the banking privileges ; that it has acquired no rights by prescription or misnomer, to conduct, legally, that business ; and that public order and safety require the levelment of that very powerful and influential institution within the sphere of action and control of our general banking system : most humbly prays your honorable body in behalf the good people of this state, to instruct the Attorney-General, by a resolution, to proceed against the said company in conformity to the provisions of the Revised Laws, this being the most impartial way to ascertain the truth and render justice.

And, as in duty bound, your memorialist shall ever pray.

EDMOND CHARLES GENET.

Prospect-Hill, town of Greenbush, March 4th, 1830.

IN ASSEMBLY,

March 18, 1830.

REPORT

Of the Committee on Courts of Justice, on the petition of Eleanor Coffie.

Mr. Allison, from the committee on courts of justice, on the petition of Eleanor Coffie, relative to a lot of land in the city of New-York,

REPORTED :

It appears the petitioner is the only surviving relative within the United States of her brother Barnaby Coffie, who died in the city of New-York on the 25th January last, possessed of certain real estate in the said city, known as No. 9, Jay-street, which property, as is alleged, has escheated to the state.

The petitioner prays an act releasing to her the right of the state in said property.

By an existing law of the state, it is necessary notice should have been published of the intended application ; which, in this case appears has not been complied with. For this reason, your committee are of opinion, the prayer of the petitioner ought not to be granted, and therefore submit the following resolution :

Resolved, That the prayer of the petitioner ought not to be granted, and that she have leave to withdraw her papers.

IN SENATE,

March 25, 1830.

REPORT

Of the Committee on Banks and Insurance companies, on the Bill from the Assembly to incorporate the President, Directors and Company of the Mechanics' Bank of Buffalo, &c.

Mr. Allen, from the committee on banks and insurance companies, to which was referred the bill from the Assembly to incorporate the president, directors and company of the Méchanics' bank of Buffalo, and in obedience to the resolution of the Senate, passed the 5th of March, 1830,

REPORTED AS FOLLOWS; TO WIT:

That the population of the village of Buffalo, is stated to be about four thousand five hundred, and that of the county of Erie, twenty-four thousand three hundred and sixteen.

The situation of this village is in a high degree, commanding. Placed at the junction of lake Erie with the Niagara river, and at the head of canal navigation, and possessing a safe and commodious harbor for vessels of a size suitable for the navigation of our inland seas, it is here that the western states will, at no distant day, find a market for their produce; as nothing, as it appears to the committee, can prevent this village from becoming a place of great and increasing business.

The pursuits of the trading portion of the citizens of Buffalo, as stated by the petitioners, is closely connected with the commerce carried on upon the great lakes, and which partakes much of the nature of foreign commerce, and therefore, it not only requires a

considerable capital to meet the demands of trade, but also the facilities afforded by banking institutions, as a necessary auxiliary, when unexpected fluctuations in the market cause a depression in the sales of the produce of the country, and the merchant is called upon for remittance of cash, by the consignor, or owner of the property, or has to meet bills drawn upon him, in anticipation of sales. These are occurrences which are very rarely experienced by the merchants and traders of an inland town, and are only known, generally, by those who are engaged in foreign commerce.

The petitioners for this corporation, state, that during six months of the last year, the arrivals at the harbor of Buffalo, exceeded eight hundred vessels; and that the merchandise received by way of the Erie canal, amounted to 16,651 tons, and that the cost of transporting this merchandise was estimated at \$240,000. In the article of salt alone, 65,431 barrels had been received, which paid to the treasury of the state in duties and tolls, at least \$60,000.

Until the last year, this thriving village has been denied the facilities afforded by a bank, and the merchants and traders have been compelled to depend on foreign institutions for the necessary accommodations. A branch of the United States' bank, is now established in the village, and is transacting a considerable business there.— This branch however, as the petitioners appear to apprehend, being at the will of the mother bank, may be withdrawn at pleasure, and leave them destitute, as they were before its establishment.

An institution at the will of foreign capitalists, who can have none of those feelings and interests in the welfare of the place, that is felt by those who have a settled residence there, it is thought, ought not to be used as an argument against granting the corporation prayed for.

The facts detailed in this report, are principally derived from the statements made by the petitioners, and from the account given of the favorable situation and growth of the village, by the author of the gazetteer of the state. The committee have no personal knowledge on the subject, and they therefore, submit the question on the passage of the bill to the wisdom of the Senate.

IN ASSEMBLY,

March 27, 1830.

REPORT

Of the committee on Public Lands, to whom was referred the petition of sundry persons, praying for a re-appraisement of certain Lands in Oneida Castleton.

The committee on public lands, to whom was referred the petition of sundry persons praying for a re-appraisement of certain lands in Oneida Castleton,

REPORT—

That the petitioners are holders of contracts for lands in the village of Oneida Castleton, which was surveyed and divided into lots, in the years 1815, by order of the Surveyor-General.

The tract of land ceded by the Oneida Indians to the people of this state, was then coming into market, and it was thought important to the value of those lands, as well as to the improvement of the country at large, that a village should be located at that place.—The season was propitious for the undertaking; a full spring tide of population and wealth was setting in upon us, and covering that part of our state especially, with its broad and steady wave; the resources of that section were daily developing; the forests receded, and gave place to the fertile field; towns and villages rose as if by magical touch, in every part of our western country; the captivating scheme of internal improvement had just been broached; the enterprising spirit of our citizens was roused; they contemplated the brilliant prospects before them, and anticipation seemed to resolve it—

self into full fruition of unbounded wealth and honor. Full scope was given to speculation, and the war in which we had been engaged, furnishing a high market for all our surplus produce, had yielded abundant facilities for its exercise.

In this state of things, the village of Oneida Castleton was surveyed. It was located in a beautiful spot on the Oneida and Scondo creeks; it was laid out in parallelograms; the streets intersecting at right angles; a canal was projected and laid down upon the plan, extending from castle bridge towards the Erie canal; spacious basins were designed to accommodate the business of this prospective city; a noble street one hundred feet in width, and two miles in length, was portrayed as the seat of business on the canal; large reservations were made of squares for public buildings, and a cemetery so capacious as to intimate to the observer, that vast multitudes would there find their long home.

The hydraulic power also, at that place, a privilege by no means common in that region, was minutely described; all the depressions of Oneida creek were carefully noted; its advantages for mills and machinery were extolled, and the whole aspect of the village, under the fostering care and patronage of the state, was such as to excite the idea, that no other in that region would compete with it.—Its advantages were deemed far to surpass those of Utica, and it was fondly hoped, that in a few years Oneida Castleton would soar above all her rivals.

The lots having been surveyed, were next appraised. This too, was done in accordance with the spirit of the times. Enormous prices were attached to very small lots, as the minimum valuations at which they would be offered for sale, evidently assuming that their advantages for business would correspond with such estimates. In 1817 the Surveyor-General advertised the sale of the village lots and the water power, and there was no want of bidders. It is a sound principle in philosophy, that matter moved, will continue to move until obstructed; and in ethics, that false premises will invariably lead to bad conclusions. Both those principles were fully demonstrated in the conduct of the purchasers at the public sale. The impetus given to speculation by the gaudy and delusive picture of a village, and by the circumstances above stated, was continued and enlarged, until lots were sold for double, treble, and even quadruple the amount of the extravagant appraisals. The Surveyor-General, perceiving the folly, or at least the indiscretion of the pur-

chasers, wisely suspended the sale, without, however, offering the water power at all. The purchasers paid one-eighth part of the purchase-money, and were required to enter into bonds for the payment of the remainder. This condition was fulfilled by some; but the bubble having soon burst, and the illusion being soon dissipated, the more cautious speculators chose to risk the loss of what they had paid, and declining to execute bonds, their lots reverted to the state. The petitioners, some of whom were required to erect buildings on their lots, entered upon the discharge of their obligations in good faith, relying upon the well known liberal policy of the state towards occupants of public lands. Disappointed in their expectations, they saw the prostration of their hopes, with the same feelings with which mankind usually receive unwelcome truths—hope lingered awhile, and then gave place to exertion.

In 1822 application was made to the legislature for relief, and an act was passed reducing the bonds of purchasers to the amount of appraisement, and allowing them credit for payments made. It is evident that this act did not extend the relief desired, for its terms were not complied with: no doubt, because the lands were not worth the appraised amount and interest.

Many of the lots reverting to the state, the Surveyor-General, in 1827, ordered a new appraisal of each, and of all unsold and unbonded lots. This was made, and probably judiciously; for the sale of the same in 1828 corresponded closely with the estimates.

This measure, which was good policy for the state, extended, however, no relief to the petitioners; they unfortunately had complied with the terms of sale, and given bonds, or erected buildings. Their bonds, therefore, were deemed collectable; and they were by the operation of that act, placed in circumstances less favorable than those who had declined to fulfil the conditions.

This, to the committee, seems too much like giving a bounty on idleness and bad faith, or at least, like a tax on industry and virtue.

At the sale in 1828, large portions of the plat originally designed for a village, was sold for farms, at from \$10 to \$15 per acre, and thereby the plan of the village was abandoned by the state, and some of the streets closed.

At the last session the petitioners again implored relief, and the committee to which their prayer was referred, reported that, although in their opinion purchasers at open sale ought generally to be held to great strictness in the discharge of their conditions, yet that the peculiar circumstances of the petitioners formed their case a strong exception to that rule. A bill for their relief was reported, and after several struggles, finally succeeded in making its way to the Senate, where it was rejected without a division.

The committee advert to these facts as some apology for spreading those details before the house. The ill fate of the bill of last session has admonished them to hesitate, and led them to question the expediency of again submitting this claim; but convinced of its reasonableness, and unanimously believing that the petitioners have strong demands upon the equity of the Legislature, they present them for consideration. And in doing this, they disclaim the idea of any dissatisfaction with the conduct of the venerable and excellent officer who has long been charged with the care of the public lands, and whose duties have ever been discharged with credit to himself and advantage to the community. His well intended designs were baffled by circumstances beyond his control.

From the statement which has been given, it will be perceived that the claims of the petitioners for relief are supported by the following arguments :

That the state, exhibiting this magnificent plan of a village or city, of great extent and superior advantages for business, held out to purchasers inducements and hopes which, in the nature of things, never could be realized.

That the hopes of business at that place were always connected with the improvement of the hydraulic privileges, which were advertised to be sold together with the building lots; but were not offered at the sale, although several bidders were in attendance.

That the mill-site was held at an enormous appraisal for several years, encouraging the idea that government deemed the advantages of the place not yet suitably appreciated.

That without the improvement of the hydraulic power, or the construction of the proposed canal or feeder, this place never did possess any advantages for the location of a village, above any other remote country town.

That the fostering hand of government, upon which the hopes of purchasers were fixed, has been withdrawn from the project; and the original designs of the State for the improvement of the Oneida lands, abandoned.

That the new appraisal of 1827, and the sale of 1828, did, in effect, afford relief to those who had not complied with the terms of sale, nor made the improvements required; while none was extended to those who yielded obedience to all.

That the State, by the sale in 1828, of far the greater portion of the village plat, for farms, which caused the closing of streets, did in fact abandon the plan of this village altogether, and thereby create a most equitable, if not a legal claim for relief.

Yielding their unqualified assent to the force of those facts, the committee beg leave to add, that in their opinion, no advantage can result to the State from the denial of this prayer; but that substantial benefits may be secured. The most of the persons interested in this application are poor; and the buildings which they erected on the premises were of little value, and are now in decay. From such, therefore, nothing can be obtained. There are, however, among them a few who have accumulated property, and made valuable improvements. The committee apprehend that it would not comport with liberal views of policy, nor with the principles of equity, even if legal, to seize the hard earnings of those prudent and industrious few. It would withhold encouragement from virtuous industry, and furnish motive to indolence and vice.

The moral character of this village is not represented in a favorable light. There are in it several honorable exceptions; but the bulk of its population is said to be just such as might be expected in a decayed village, in the neighborhood of an Indian tribe, whose inhabitants have no interest in the soil, and very feeble hopes of ever acquiring any. Borne down by the weight of debt which hangs upon them, they have long since relaxed exertion; and many of the tenements are now converted into "tippling shops" for the Indians. This is a serious evil, but the remedy is at hand. Remove the cause, and the effect will cease. The State owns a considerable tract of land near this place; and it is therefore also advisable that something be done to elevate the character of this village. Let the bonds of the petitioners be reduced, and it is hoped that the effect will be immediately felt. The inhabitants who cannot pay, will be

enabled to sell to others. Under the present circumstances of the village, virtuous and industrious mechanics and others, looking for settlements, turn from it in disgust. They shun a place degraded by debt and vice.

The committee therefore are urged by every consideration, moral, political or economical, to recommend the prayer of the petitioners to the favorable regard of the Legislature ; and have instructed their chairman to ask leave to introduce the following bill.

J. B. GOSMAN.

IN SENATE,

March 29, 1830.

REPORT

Of the committee on Manufactures, to which was referred the petition of sundry Flour Merchants of the city of New-York.

Mr. Woodward, from the committee on manufactures, to which was referred a petition of sundry flour merchants in the city of New-York, also a remonstrance from sundry millers and flour merchants in the city of Albany, relating to the same subject,

REPORTED AS FOLLOWS, TO WIT:

That they have examined said petition and the documents therein referred to ; they pray that an additional number of inspectors of flour and meal may be appointed for the city of New-York.

Your committee are aware of the great importance of the matter referred to them, and they feel a diffidence in approaching the subject, especially when men of high standing and character, and long experience in the manufacture and sale of flour, differ in opinion as to the best mode to be adopted for the inspection of flour and meal. The petitioners think there ought to be three inspectors, who should personally attend and superintend the inspection of all flour and meal to be inspected.

The other side contend that the business will be better performed and the standard of flour better maintained, by having one general inspector, and the duties of the office performed by deputies, and urge as a reason that the different branches of government have a head in each department. They also suggest that if the fees of the

[No. 341.]

general inspector is thought to be too great, it would be better to diminish the fees.

Your committee have examined the facts referred to them. They are informed that the fees of the inspector of flour in the city of New-York, amount to upwards of eleven thousand dollars. Your committee are also informed, that the fees of the inspector of domestic spirits, and also that of the inspector of pot and pearl ashes, are very great ; and there is now before the committee, a petition signed by a number of dealers in pot and pearl ashes, similar in character to the one under consideration. Your committee think the fees of an office ought to be graduated, according to the duties to be performed, and the character and necessary acquirements of the holder.

It cannot be presumed that the Legislature ever intended to create an office as a mere sinecure ; it is inconsistent with every principle of republicanism, and not warranted by public opinion ; but contingent circumstances has rendered some offices bordering on, if not included in the term sinecure. The policy of our government has been, that all officers should personally attend to the duties of their office, and your committee can see no cause why an inspector of any article should be exempt from that service. An inspector is appointed for a certain duty, to inspect a certain article. His character as an honest man, and the confidence the public have in his understanding and judgment, give to that article a character in which the public have confidence. What would be said if a judge of one of our courts should depute a member of the bar to take his seat, to hear and determine causes, pay him part of his salary, put the residue in his pocket (which of course could not be very large) ? The committee can see no difference in principle. The mechanical duties of any office may with safety be intrusted to any person who has ability and experience sufficient to perform those duties. But in matters of opinion, requiring skill, study and experience, the principal ought to perform the duties, and not trust to deputies.

Your committee are informed that a bill is before the Assembly authorising the appointment of two inspectors of flour in New-York. They have not examined that bill nor its merits, but as it is acknowledged that two persons cannot perform the duties of the office, they can see no good reason for its passage. It will only divide the fees and still leave the duty to be performed by deputies. Your committee do not believe that any diminution in the standard of flour

would take place by reason of having three inspectors, when their interests are united; but, on the contrary, would be the means of keeping it uniform.

Upon an examination of the whole subject, your committee are of opinion that public policy requires that every officer should personally attend to the duties of his office. In accordance with that opinion, they have prepared a bill for the consideration of the Senate, for the appointment of three inspectors of flour and meal. Should the opinion of your committee be favorably received by the Senate, they will report a bill to increase the number of inspectors of pot and pearl ashes, and of domestic distilled spirits.

IN SENATE,

March 26, 1830.

REMONSTRANCE

Of sundry millers and dealers in flour, against the passage of a law increasing the number of inspectors of flour in the City of New-York.

To the Honorable the Legislature of the State of New-York.

The undersigned, millers and dealers in flour, having understood that application has been made to your Honorable Body for the passage of a law to increase the number of inspectors of flour for the city of New-York, respectfully remonstrate against the passage of such a law.

Believing as your remonstrants do, that if the number of inspectors should be increased, great evils would ensue. The present law authorising the appointment of but one inspector for the city of New-York, and allowing him the privilege of appointing deputies, is much better calculated to establish and retain a uniform standard of the quality of flour, than to appoint an increased number of inspectors with similar powers. If it is useful in our political administration of government to have a head of the respective departments to carry into effect the duties devolving on the office, it is most assuredly equally useful and necessary to place a single person at the head of so important a branch of our trade as that relating to the manufacture and inspection of flour. Collisions which may and will arise (between men holding offices of like import,) from the nature of the business in which they are engaged, will add nothing to the character of the article inspected, but will be liable to produce a contrary effect. The arrangements made by the present inspector of flour for the city of New-York, have afforded every facility to the trade

which is required to expedite the inspection of flour ; and we are confident that no just cause of complaint exists on that head. If the Legislature believe the emoluments of the office too great, we conceive that it would be more advisable to reduce the fees, than to increase the number of inspectors ; for if this should be done, the Legislature would probably soon be applied to, to raise the present price allowed for the inspection of flour.

We believe that the present law embraces all the necessary requirements to carry into effect the intentions of the Legislature in establishing the office for the inspection of flour within the city of New-York ; and do therefore pray that your Honorable Body will not pass a law to create an additional number of inspectors of flour, &c.

ISAIAH TOWNSEND,
RICHARD WINSLOW,
WILLIAM JAMES,
C. F. PRUYN & CO.
ROBERT GILCHRIST & CO.
WILLIAM NEWTON.

IN ASSEMBLY,

March 18, 1830.

REPORT

Of the Select. Committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York.

Mr. Cargill, from the select committee, consisting of the members attending this House from the city of New-York, to whom was referred the memorial of the mayor, aldermen and commonalty of the city of New-York,

REPORTED :

That the memorialists ask the Legislature for the passage of the usual law, annually called for, authorising them to raise and collect, by tax on real and personal property in said city, a sum necessary to defray the expenses attending the government thereof. This sum is estimated at four hundred and fifty thousand dollars ; which, though large in amount, the committee are happy to find does not exceed the sum applied for at the last session of the Legislature.

It may be proper to state, that this sum to be raised from the property of the city, is necessary to meet the general expenses ; the principal part of which are annual and permanent. And they may be classed under the following general heads, viz : The expenses of domestic and foreign poor ; of the bridewell, penitentiary and criminals ; streets and roads ; common school monies ; watching and lighting the city ; salaries of officers ; docks and slips ; fire department ; police department ; interest of city debt ; markets ; city courts, and city and county contingencies. It is reasonably to be expected that the municipal expenses attending the government of a popula-

tion of two hundred thousand, must be great, and that they will gradually increase with the growth of the city. To check and gradually diminish these expenses by a judicious economy, are considerations of primary importance in every government : And the committee have every reason to believe that this consideration has not been neglected by the city government during the last year. The best evidence of this conclusion is the fact that the amount applied for does not exceed the amount of the last preceding year. The committee cannot refrain from expressing a strong anticipation of a still more favorable result in succeeding years ; when the newly organized government of the city, formed by a convention of the people, shall go into operation by the passage of a bill before your honorable body for that purpose. From this new arrangement the most salutary effects are anticipated, from the bearing it will have upon the expenditures of the city.

Your committee being satisfied that the sum called for by the memorialists is not greater than is required to meet the current demands of the city, are of opinion that the prayer of the memorialists ought to be granted, and have accordingly prepared a bill, and instructed their chairman to ask leave to introduce the same. .

IN ASSEMBLY,

March 19, 1830.

REPORT

Of the Select Committee, on the petition of Gerrit Peebles and Richard Van Derkar.

Mr. Lush, from the select committee to whom was referred the petition of Gerrit Peebles and Richard Van Derkar, of the county of Rensselaer, praying that two certain islands lying in the north forks or sprouts of the Mohawk river, lying in the county of Albany, may be annexed to the county of Rensselaer,

REPORTED :

That it appears from the petition presented to this House, that Gerrit Peebles, one of the said petitioners, is the owner, and Richard Van Derkar, the other petitioner, is the occupant as tenant of Gerrit Peebles, of an island lying in the north forks or sprouts of the Mohawk river, containing about one hundred and thirty-six acres of land ; and that the said Richard Van Derkar resides with his family on one of the said islands.

That your committee have, on investigation of this subject, ascertained that the shores on the western banks of the said river, are ragged and precipitous, and the beds of said sprouts being such a continuous succession of rapids and rifts, (excepting a small portion adjoining the southeast part of the county of Saratoga,) as to preclude the possibility of a direct communication with the town of Watervliet : and that the only mode of communication is by crossing to the east bank of the Hudson river, by means of a ferry established between one of the said islands and the village of Lansingburgh, and again re-crossing at Troy, and thereby subjecting the petitioner, who wishes to transact public business in the town of Wa-

tervliet, to a journey of four or six miles, in going and returning, and to heavy and expensive tolls. That the said Richard Van Derkar, by means thereof, is not only excluded from the rights of a citizen upon equal terms with his neighbors, but, at the same time, he is excluded from participating in the benefits derived from the common schools, inasmuch as the distance and the expenses of carriage and of tolls, amounts to an absolute prohibition of sending his children to the schools of that town.

These, together with other reasons stated in the petition, and to which your committee beg leave to refer, have induced this committee to come to the conclusion that the application is just and reasonable, and ought to be granted. They have accordingly prepared a bill in accordance with such conclusion, and instructed their chairman to ask for leave to introduce the same.

IN SENATE,

March 29, 1830.

MESSAGE,

From the Acting Governor, transmitting a Communication from the Attorney-General, relative to the trial of one of the causes on the Astor claims.

TO THE SENATE,

GENTLEMEN,

I herewith transmit to you, a communication received from the Attorney-General, in relation to the trial of one of the causes on the Astor claim, which I have the honor to lay before you.

E. T. THROOP.

Albany, March 26, 1830.

Albany, March 26, 1830.

SIR—

Since my communication in December last, in relation to the claim of Mr. John Jacob Astor and his associates to certain lands in the counties of Putnam and Dutchess, the judgment that had been obtained in favor of the claimants, against James Carver, has been affirmed by the supreme court of the United States. I have obtained a copy of the opinion of that court which is herewith submitted.

I am sir, with great respect,

Your obedient humble servant,

GREENE C. BRONSON,

Attorney-General.

His Excellency ENOS T. THROOP.

[No. 347.]

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do. Observations of that nature are understood to be addressed to the jury, merely for their consideration, as the ultimate judges of matters of fact, and are entitled to no more weight or importance, than the jury in the exercise of their own judgment, choose to give them. They neither are, nor are understood to be, binding upon them as the true and conclusive exposition of the evidence. If, indeed, in the summing up, the court should misstate the law, that would justly furnish a ground for an exception. But the exception should be strictly confined to the misstatement, and by being made known at the moment, would often enable the court to correct an erroneous expression, or to explain or qualify, in such a manner as to make it wholly unexceptionable, or perfectly distinct. We trust, therefore, that this court will hereafter be spared the necessity of examining the general bearings of such charges. It will in the present case, be our duty hereafter, to consider whether the objections raised against the present charge, can be supported in point of law.

The original plaintiff claimed title at the trial under a marriage settlement, purporting to be made and executed on the 13th of January, 1758, by an indenture of release, between Mary Philipse, of the first part, Roger Morris, of the second part, and Joanna Philipse and Beverly Robinson of the third part; whereby in consideration of a marriage intended to be solemnized between Roger Morris and Mary Philipse, &c. &c., she, Mary Philipse, granted, released, &c. unto Joanna Philipse and Beverly Robinson, "in their actual possession now being, by virtue of a bargain and sale to them thereof made for one whole year, by indenture bearing date the day next before the date of these presents, and by force of the statute for transferring uses into possession, and to their heirs, all those several lots or parcels of land, &c. &c." upon certain trusts and uses in the same indenture mentioned. This indenture, signed and sealed by the parties, with the usual attestation of the subscribing witnesses, (William Livingston and Sarah Williams,) to the sealing and delivery thereof, with a certificate of the proof of the due execution thereof by William Livingston, (one of the subscribing witnesses,) before Judge Hobart, of the supreme court of New-York, on the 5th of April, 1787, and a certificate of the recording thereof in the Secretary's office of the state of New-York, was offered in evidence at the trial by the plaintiff, and was objected to by the defendant, upon the ground that the said certificate of the execution was not legal and competent evidence, and did not entitle the plaintiff to read the deed in evidence without proof of its execution. The judge who

presided at the trial overruled the objection, and admitted the deed in evidence. This constitutes the first exception of the defendant. A witness was then sworn, who testified that the signatures of William Livingston and Sarah Williams to the deed were in their proper hand-writing, and that they were both dead. The deed was then read in evidence. The certificate of the probate of the deed, before Judge Hobart, is in the usual form practiced in that state, excepting only that it states with somewhat more particularity than is usual, that William Livingston, one of the subscribing witnesses, &c. being duly sworn, did testify and declare "that he was present at or about the day of the date of the said indenture, and did see the within named Joanna Philipse, Beverly Robinson, Roger Morris and Mary Philipse sign and seal the same indenture, *and deliver it as their, and each of their voluntary acts and deeds,*" &c.

We are of opinion, that under these circumstances and according to the laws of New-York, there was sufficient *prima facie* evidence of the due execution of the indenture, (by which, we mean not merely the signing and sealing, but the delivery also,) to justify the court in admitting it to be read to the jury, and that in the absence of all controlling evidence the jury would have been bound to find that it was duly executed. We understand such to be the uniform construction of the laws of New-York, in all cases where the execution of any deed has been so proved, and has been subsequently recorded. The oath of the subscribing witness before the proper magistrate, and the subsequent registration, are deemed sufficient *prima facie* to establish its delivery as a deed. The objection was not indeed, seriously pressed at the argument.

The next exception of the defendant grew out of the non-production of the lease recited in the deed of marriage settlement, and of the insufficiency of the evidence to establish either its original existence or its subsequent loss. We do not think it necessary to go into a particular examination of the various exceptions on this head, or of the actual posture under which they were presented to the court, or of the manner in which they were ruled by the court. Whichever way many of the points may be decided, our opinion proceeds upon a ground which supersedes them; and destroys all their influence upon the cause. We are of opinion not only that the recital of the lease in the deed of marriage settlement was evidence between those parties of the original existence of the lease, but that it was conclusive evidence between these parties of the original ex-

istence of the lease, and superseded the necessity of introducing any other evidence to establish it.

The reasons upon which this opinion is founded will now be briefly expounded. To what extent and between what parties the recital of a lease in a deed of release (for we need not go into the consideration of recitals generally,) is evidence, is a matter not laid down with much accuracy or precision in some of the elementary treatises on the subject of evidence. It is generally laid down that a recital of one deed in another binds the parties and those who claim under them. Technically speaking, it operates as an estoppel, and binds parties and privies; privies in blood, privies in estate, and privies in law. But it does not bind mere strangers, or those who claim by title paramount the deed. It does not bind persons claiming by an adverse title, or persons claiming from the parties by title anterior to the date of the reciting deed. Such is the general rule. But there are cases in which such a recital may be used as evidence even against strangers. If, for instance, there be the recital of a lease in a deed of release, and in a suit against a stranger, the title under the release comes in question, there the recital of the lease in such release is not, *per se*, evidence of the existence of the lease. But if the existence and loss of the lease be established by other evidence, there the recital is admissible as secondary proof, in the absence of more perfect evidence to establish the contents of the lease; and if the transaction be an ancient one, and the possession has been long held under such release and is not otherwise to be accounted for, there the recital will of itself, under such circumstances, materially fortify the presumption from lapse of time and length of possession of the original existence of the lease. Leases, like other deeds and grants, may be presumed from long possession, which cannot otherwise be explained; and under such circumstances a recital of the fact of such a lease in an old deed is certainly far stronger presumptive proof in favor of such possession under title, than the naked presumption arising from a mere unexplained possession.

Such is the general result of the doctrine to be found in the best elementary writers on the subject of evidence.* Mr. Peake (on evidence, 165,) seems, indeed, to have entertained a different opinion, and to have thought even as between the parties the recital

* See 1 Phillips on Evid. ch. 8. § 2 p. 411—1 Starkie Evid. Pt. 2, § 123, p. 301, § 156, p. 369. Com. Dig. Estoppel, B. C.—Id. Evidence, B. 5.—Matthews on Presump. 195, 196, 197, 198, 200, 201, 202, 203, 204, 205, 206, 207, 208.—Co. Lit. 352.

was admissible as secondary evidence only upon proof that the lease was lost. But in this opinion he is not supported by any modern authority, and it is very questionable if he has not been misled by confounding the different operations of recitals as evidence between strangers and between the parties.

It may not, however, be unimportant to examine a few of the authorities which support the doctrine on which we rely. The cases of the Marchioness of Anandale vs. Harris (2 P. Will. 432) and Shelby vs. Wright (Willes R. 9) are sufficiently direct as to the operation of recitals by way of estoppel between the parties. In Ford vs. Grey, (1 Salk. 285) one of the points ruled was, "that a recital of a lease in a deed of release is good evidence of such lease against the releasor and those that claim under him; but as to others it is not, without proving there was such a deed and it was lost and destroyed. The same cause is reported in 6 Mod. 44, where it is said that it was ruled, "that the recital of a lease in a deed of release is good evidence against the releasor and those who claim under him." It is then stated, that "a fine was produced, but a deed was offered in evidence which did recite a deed of limitation of the uses, but no deed declaring the uses; and the question was whether that [recital] was evidence. And the court said that the bare recital was not evidence; but that if it could be proved that such a deed had been and lost, it would do, if it were recited in another." This was doubtless the same point asserted in the latter clause of the report in Salkeld; and thus explained, it is perfectly consistent with the statement in Salkeld, and must be referred to a case where the recital was offered as evidence against a stranger. In any other point of view it would be inconsistent with the preceding proposition, as well as with the cases in 2 P. Williams and Willes. In Trevivan vs. Lawrence, (1 Salk. 276) the court held, that the parties and all claiming under them, were estopped from asserting that a judgment sued against the party, as of Trinity term, was not of that term but of another term, that very point having arisen and been decided against the party upon a scire facias on the judgment. But the court there held (what is very material to the present purpose) that, "if a man makes a lease by indenture of D. in which he hath nothing, and afterwards purchases D. in fee, and afterwards bargains and sells it to A. and his heirs, A. shall be bound by this estoppel. And that where an estoppel *works on the interest of the lands*, it runs with the land into whose hands soever the land comes—and an ejectment is maintainable upon the mere estoppel." This decision is important in se-

veral respects. In the first place it shows that an estoppel may arise by implication from a grant, that the party hath an estate in the land which he may convey, and he shall be estopped to deny it.* In the next place, it shows that such estoppel binds all persons claiming the same land, not only under the same deed, but under any subsequent conveyance from the same party—that is to say, it binds not merely privies in blood, but privies in estate, as subsequent grantees and alienees. In the next place, it shows that an estoppel which (as the phrase is) works on the interest of the land, runs with it into whosoever hands the land comes. Now, this last consideration comes emphatically home to the present case. The recital of the lease in the present release works on the interest in the land; the lease gave an interest in the land, and the admission of it in the release, enabled the latter to operate in the manner which the parties intended. The estoppel, therefore, worked on the estate in the land, not by implication merely, but directly by the admission of the parties. That admission was a muniment of the title, and as an estoppel, travelled with the title into whosoever hands it might afterwards come. The same doctrine is recognized by *Ld. Ch. Baron Comyn in his Digest, Estoppel, B. & E. 10.* In the latter place, (E. 10) he puts the case still more strongly—for he asserts that the estoppel binds, even though all the facts are found in a special verdict. “But,” says he, and he relies on his own authority, “where an estoppel binds one estate and converts it to an interest, the court will adjudge accordingly. As, if A. leases land to B. for six years, in which he has nothing, and then purchases a lease of the same land for twenty-one years, and afterwards leases to C. for ten years, and all this is found by verdict, the court will adjudge the lease to be good, though it be so only by conclusion.” A doctrine similar in principle was asserted in this court, in *Terrett vs. Taylor*, (9 Cranch. 52.) The distinction, then, which was urged at the bar, that an estoppel of this sort binds those claiming under the same deed, but not those claiming by a subsequent deed under the same party, is not well founded. All privies in estate by subsequent deed are bound in the same manner as privies in blood. And so, indeed, is the doctrine in *Comyn’s Dig. Estoppel, B.* and in *Coke Litt. 352, A.*

We may now pass to a short review of some of the American cases on this subject. *Denn vs. Cornell* (3 John. C. 174) is strongly in point. There, Lieutenant-Governor Corden, in 1775, made his

* See also *Fair title vs. Gilbert*, 2 T. chp. 171—*Helpe vs. Henford*, 2 B. and Ald. 243—*Rees vs. Lloyd, Wightwick*, R. 123.

will, and in it recited that he had conveyed to his son David his lands in the township of Flushing; and he then devised his other estate to his sons and daughter, &c. &c. Afterwards David's estate was confiscated under the act of attainder, and the defendant in ejectment claimed under that confiscation, and deduced his title from the state. No deed of the Flushing estate, the land in controversy, was proved from the father, and the heir at law sought to recover on that ground. But the court held that the recital in the will, that the testator had conveyed the estate to David, was an estoppel of the heir to deny that fact, and bound the estate. In this case the estoppel was set up by the tenant claiming under the state, as an estoppel running with the land. If the state or its grantee might set up the estoppel in favor of their title, then, as estoppels are reciprocal and bind both parties, it might have been set up against the state or its grantee. It has been said at the bar, that the state is not bound by estoppel by any recital in a deed. That may be so, where the recital is in its own grants or patents, for they are deemed to be made upon suggestion of the grantee.* But where the state claims title under the deed, or other solemn acts of third persons, it takes it cum onere, and subject to all the estoppels running with the title and estate, in the same way as other privies in estate.

In *Penrose vs. Griffith* (4 Binney R. 231) it was held that recitals in a patent of the commonwealth were evidence against it, but not against persons claiming by title paramount from the commonwealth. The court there said that the rule of law is, that a deed containing a recital of another deed is evidence of the recited deed against the grantor and all persons claiming by title derived from him subsequently. The reason of the rule is, that the recital amounts to the confession of the party, and that confession is evidence against himself and those who stand in his place. But such confession can be no evidence against strangers. The same doctrine was acted upon and confirmed by the same court, in *Garwood vs. Dennis*, (4 Binney R. 314.) In that case the court further held, that a recital in another deed was evidence against strangers, where the deed was ancient and the possession was consistent with the deed. That case also had the peculiarity belonging to the present, that the possession was of a middle nature—that is, it might not have been held solely in consequence of the deed, for the party had another title; but there never was any possession against it. There was a double title, and the question was to which possession might be attributable. The court thought that a suitable

* *But see Commonwealth vs. Peapack, proprietors*, 10 Mass. R. 185.

foundation of the original existence and loss of the recited deed being laid in the evidence, the recital of the deed was good corroborative evidence, even against strangers. And other authorities certainly warrant this decision.*

We think, then, that upon authority the recital of the lease in the deed of release in the present case was conclusive evidence upon all persons claiming under the parties in privity of estate, as the present defendant in ejectment did claim, and independently of authority, we should have arrived at the same result upon principle; for the recital constitutes a part of the title, and establishes a possession under the lease necessary to give the release its intended operation. It works upon the interest in the land, and creates an estoppel which runs with the land against all persons in privity under the releasors. It is as much a muniment of the title as any covenant therein running with the land.

This view of the matter, dispenses with the necessity of examining all the other exceptions, as to the nature and sufficiency of the proof of the original existence and loss of the lease, and of the secondary evidence, to supply its place.

The next question is, supposing the marriage settlement duly executed, what estate passed by it to Morris and his wife and their children. The uses declared in the deed, are in the following terms: "to and for the use and behoof of them the said Joanna Phillipse and Beverly Robinson (the releasees) and their heirs, until the solemnization of the said intended marriage; and from and immediately after the solemnization of the said intended marriage, then to the use and behoof of the said Mary Phillipse and Roger Morris and the survivor of them," for and during the term of their natural lives, without impeachment of waste; and from and after the determination of that estate, *then to the use and behoof of such child or children as shall or may be procreated between them*, and to his and their heirs and assigns forever. But in case the said Roger Morris and Mary Phillipse shall have no child or children begotten between them, or that such child or children shall happen to die during the life time of the said Roger and Mary, and the said Mary should survive the said Roger *without issue*, then to the use and behoof of the said Mary Phillipse and her heirs and assigns forever. And in case the said Roger should sur-

* See, in addition to the foregoing authorities, Buller N. P. 254—Gill Evid. 100, 101—Bean vs. Parker, 17 Mass. Rep. 591—Wilkinson vs. Scott, 17 Mass. Rep. 249—Inhabitants Bruintree vs. Inhabitants Hingham, 17 Mass. Rep. 482—Hites' heirs vs. Shroder, 3 Littel Rep. 447, 2 Thomas' Co. Litt. 582, note.

vive the said Mary Philipse, *without any issue by her, or that such issue is then dead, without leaving issue*, then after the decease of the said Roger Morris, to the only use and behoof of such person or persons, and in such manner and form as the said Mary Philipse shall at any time during the said intended marriage, devise the same by her last will and testament," &c. &c. There are other clauses not material to be mentioned. The marriage took effect; children were born, and indeed all the children were born before the attainder in 1779. Mary Morris survived her husband and died in 1825, leaving her children, the lessors of the plaintiff, surviving her. The conveyance taking effect by the statute of uses, upon a deed operating by way of transmutation of possession, no difficulty arises in giving full effect by way of springing or shifting or executory uses, to all the limitations, in whatsoever manner they may be construed.

The counsel for the original defendant contended that the parents take a life estate, and that there is a remainder upon a contingency with a double aspect. That the remainder to the children is upon the contingency of their surviving their parents; and in case of their non-survivorship, there is an alternative remainder to the mother, which would take effect in lieu of the other. That consequently the remainder to the children was a contingent remainder during the life of their parents; and as such, it was destroyed by the proceedings and sale under the act of attainder and banishment, of 1779. The circuit court was of a different opinion, and held that the remainder to the children was contingent until the birth of a child, and then vested in such child, and opened to let in after born children; and that there being a vested remainder in the children at the time of the act of 1779, it stands unaffected by that act.

We are all of opinion that the opinion of the circuit court upon the construction of the settlement deed was correct. It is the natural interpretation of the words of the limitations, in the order in which they stand in the declaration of the uses. The estate is declared to be to the parents during their natural lives, and then to the use and behoof of such child or children as may be procreated between them, and to his, her and their heirs and assigns forever. If we stop here, there cannot be a possible doubt of the meaning of the provision. There is a clear remainder in fee to the children, which ceased to be contingent upon the birth of the first, and opened to let in the after-born children.* It is perfectly consistent with

* See *Doe vs. Perryn*, 8 T. Rep. 484. *Doe vs. Martin*, 4, T. R. 39. *Bromfield vs. Crowder*, 4 Bos. and Pull. 315. *Doe vs. Provoost*, 4, John R. 61.

this limitation, that the estate in fee might be defeasible and determinable upon a subsequent contingency, and upon the happening of such contingency might pass, by way of shifting executory use (as it might in case of devise by way of executory devise,) to other persons in fee, thus mounting a fee upon a fee. The existence, then, of such executory limitation over by way of use, would not change the nature of the preceding limitation, and make it contingent, any more than it would in the case of an executory devise. The contingency would attach, not to the preceding limitation, but to the executory use over. Let us now consider what is the effect of the succeeding clause in the settlement deed, and see if it be capable consistently with the apparent intention of the parties, of operating as an alternative remainder under the double aspect of the contingency as contended for by the original defendant. The clause is—"But in case the said Roger Morris and Mary shall have no such child or children begotten between them, or that such child or children shall happen to die during the lifetime of the said Roger and Mary, and the said Mary should survive the said Roger without issue, then," &c. Now it is important to observe, that this clause does not attach any contingency to the preceding limitation to the children, but merely states the contingency upon which the estate over is to depend. It does not state that the children shall not take unless they *survive* the parents, but that the mother shall take in case she survives her husband without issue. She, then, and not the children, are to take in case of the contingency of her survivorship. It is applied to her and not to them. Besides, upon the construction contended for at the bar, if all the children should die during the lifetime of the parents, *leaving any issue*, such issue could not take; and yet a primary intention was, to provide for the issue of the marriage. Now in such a case, could the mother take the estate over? for that, by the terms of the settlement, would take effect only in case she survived her husband without issue. The subsequent clause demonstrates this still more fully: for her power to dispose of the estate by will, in case her husband survives her, is confined to such survivorship, if "such issue is then dead without leaving issue." Another difficulty in the construction contended for is, that the children must survive both the parents; and that if they should survive the mother and not the father, in that event they could not take. Yet the settlement plainly looks to the event of the death of the mother without issue, as that alone on which the estate over is to have effect. It is also the manifest intention of the

settlement, that if there is any issue, or the issue of any issue, such issue shall take the estate; which can only be by construing the prior limitation in the manner in which it is construed by this court. The general rule of law founded on public policy is, that limitations of this nature shall be construed to be vested when and as soon as they may. The present limitation, in its terms, purports to be contingent only until the birth of a child, and may then vest—so that whether we consult the language of the settlement, the order of its provisions, the apparent intention of the parties, or the general rule of law, they all lead to the same result—that the estate of the children was contingent only until their birth; and that when the act of 1779 passed, they being all then born, it was a vested remainder in them and their heirs, and not liable to be defeated by any transfer or destruction of the life estate.

This view of the settlement deed renders it wholly unnecessary to enter upon any minute considerations of the nature and operation of the attainder act of 1779. Since it is clear that that act, whether it worked a transfer or destruction of the life estate of the parents, (and in our opinion the former was its true operation,) it did not displace the vested remainder of the children, but left that to take effect upon the regular determination of the life estate.

In respect to another point raised at the argument, that the power referred to Roger Morris and wife, under the marriage settlement, to dispose of the land to the amount of £3,000, so far as it remained unexecuted by them, was, by the attainder act of 1779, transferred to the state, and might be executed by the state, we are of opinion, that it is not well founded. In the first place we consider this to be a power personal in the parents, and to be exercised in their discretion and not in its own nature transferrable. Even under the statutes of treason in England, powers and conditions personal to the parties did not by an attainder pass to the crown. (1 Hale, Pl. Cr. 240, 242, 244, 245, 246, Jackson *vs.* Catlin, 2 John, R. 248, Sugden or Powers, 174, 176.) And it has been settled in New-York, that the offence stated in the act was not, strictly speaking, treason, but *sui generis*, as the terms of the act stated it.* In the next place, the act purports to vest in the state by forfeiture, the “*estate*” only of the offenders, and being a penal act, it is to be construed strictly. A *power* to dispose of land in the seisin of a third person, is in no just sense an *estate* in the land itself.† In the

* Jackson *vs.* Catlin, 2 Johnson R. 248.

† Ibid.

next place the deed of the commissioners authorised by the act, purports generally to convey all the estate, right, title and interest of the offenders in the property conveyed, and does not purport to be any execution of a power of a limited nature and object. In every view, the doctrine contended for is untenable.

Passing over for the present some minor exceptions, we may now advance to the consideration of the objections urged against the charge of the court. And these objections, so far as they have not been already disposed of by the questions growing out of the proofs applicable to the lease, are to the direction of the court upon the point whether there was or was not a due delivery of the marriage settlement deed. If that deed was duly delivered; then no acts done after the marriage by the parents, however inconsistent with that deed, could affect the legal validity of the rights of the children, once acquired and vested in them under it. But the point pressed at the trial was, whether it was ever executed and delivered at all, so as to become an operative conveyance; or whether there was a mere nominal execution by the parties, and it was then laid aside and abandoned, as a conveyance, before the marriage, and never became complete by delivery. There was at the trial what the law deems sufficient *prima facie* evidence, of the delivery of the deed. But certain omissions as well as certain acts of the parties were relied on to rebut this evidence, and to establish the conclusion, that there had been in point of fact no such delivery. With the value of these acts and circumstances as matters of presumption for the consideration of the jury, by way of rebutter of the *prima facie* evidence, this court has nothing to do, and does not intend to express any opinion thereon. But so far as they bore upon the fact of delivery, they applied with the same force in relation to the children, as they did in relation to the parents; that is, so far as they were presumptive of the non-delivery of the deed, they furnished the same presumption against the children, that they would against the parents. They were open to explanation and observation, and had just as much weight in the one case, as in the other. They were not acts or omissions which bound the children, supposing them to have any vested interests; but circumstances of presumption to be weighed, as far as they went, to establish that no interest ever vested in them by reason of the non-delivery of the deed of settlement.

Whatever might have been the inconsistency of these acts with the provisions of that deed, that inconsistency was no otherwise important than as it might furnish a presumption against the existence of the deed, as an operative conveyance.

It is in reference to these considerations, that the argument at the bar has insisted upon objections to the charge of the judge at the trial; and in examining the charge on this head, difficulties have occurred to the court itself.

The circumstances principally relied upon, were the dormancy of the settlement deed, from 1758, to 1779, the omission to record it until 1787, and the supposed inconsistency of certain deeds executed by the parents, between 1758 and 1773, with the title under that settlement.

In respect to the dormancy of the deed the charge is as follows: "It has been said that this is a dormant deed, never intended by the parties to operate; that it had slept until after the attainder and until the year 1787. *There is weight* in this, or rather there would be weight in it, *if the parties in interest had slept on their rights.* But who has slept? Morris and his wife, Beverly Robinson and Joanna Philipse, the trustees. They are the persons that have slept, *and not the children.* This does not justify so strong an inference against the children, as if they had slept upon their rights. Is it fair in such a case to draw any inference *against the children?*" To two of the judges this appears to amount to a direction that in point of law the dormancy of the deed during this period not having been the act of the children does not furnish the same presumption of the non-delivery against them, as it would against the parents; and that, to give the presumption from this circumstance full effect, it ought to appear that the children had slept on their right; that is, had acquiesced in such dormancy of the title. To those judges this direction seems erroneous, because the presumption is the same whether the children acquiesced or not.

In respect to the non-recording of the deed the charge proceeds to state—"It has also been urged that this deed was not recorded until 1787. Is there any thing in this fact, *that should operate against the children?* They were minors for the greater part of the time down to the year 1787, when it was recorded," &c. &c.

It seems to the same judges that the same distinction as to the effect of the presumption in the case of the parents and that of the children pervades this, as it does the former statement.

As to the inconsistency relied on, the introductory part of the charge is as follows—"It is also said that Morris and his wife have done acts inconsistent with the deed. In weighing the force and effect of these acts, you must bear in mind the time *when the interest vested in the children under this deed*, for, after that interest vested none but themselves could divest it," &c. It is certainly true that after the interest was once vested in the children, no act however inconsistent with the deed, done by the parents could affect that interest. But the point of view under which the argument was addressed to the court was, that such inconsistency furnished ground for a presumption of a non-delivery of the deed. And in this point of view it seems to the same judges, that this part of the charge relies too much upon a distinction between the parents and the children as to the effect of the presumption. In another part of the charge the judge very properly puts all these acts of supposed inconsistency upon the true ground, what was the intent of the parties in these acts, and whether they were done in hostility to the deed, supposing it inoperative, or as acts of parents acting beyond the deed for what they might deem beneficial to their children and for the interest of all concerned in the estate.

To the other judges, however, these objections do not appear to be well founded, when taken in connection with the general scope and object of the remarks of the judge in his charge upon this branch of the case. The purpose for which these omissions and acts of alleged inconsistency in Morris were offered, had been explicitly stated. The jury had been told that they were relied upon to rebut the evidence of delivery of the deed, which had been offered on the part of the plaintiff below. Before entering upon any comments on this evidence, and to prepare the minds of the jury for the due application of the remarks, the judge observed: "What, then, is the evidence to bring the *fact of delivery* into doubt? What is the reasonable presumption to be drawn from the facts proved? Keeping in mind, that this is evidence on the part of the defendant to disprove the presumption of law, from the facts proved that the deed was duly delivered." The jury were, therefore, fully apprised of the bearing of these circumstances, and the purpose for which they were offered. And they could not but have understood, that it was

submitted to them to judge of the weight to which they were entitled, otherwise the evidence would have been excluded as incompetent. And the jury must have understood that they did weigh to some extent against the children—for when speaking of the objection, that the deed had lain dormant for a number of years, the jury were told, that this circumstance did not justify *so strong* an inference against the children as if they had slept upon their rights; thereby admitting that it was open to an inference against them, but not so strong as if they had been of age, and the life estate of their parents ended, and they during that delay had been in a situation to assert their rights. And should it be admitted that the judge erred in this suggestion, it would amount to no more than an intimation of his opinion upon the weight of evidence. The same remark will apply to every part of the charge, when the rights of the children are spoken of in contra-distinction to those of their parents. They refer to the *delivery* of the deed. Thus, with respect to the delay in recording the deed, the judge puts the question to the jury in this form—"Is there any thing in the fact that it was not recorded from which an inference can be drawn against the *deed*?" Pointing the attention of the jury to the fact of *delivery*, and not to any controlling distinction between the interest of the children and their parents. The bearing of the remarks of the judge with respect to the various deeds executed by Morris and his wife, and which are alleged to have been inconsistent with the marriage settlement, would not have misled the jury. It is true they were told that in weighing the force and effect of these acts, they must bear in mind the time when the interest vested in the children under the deed. This remark must have been understood by the jury, as subject to their finding, with respect to the delivery of the deed, and not as expressing an opinion that the interest of the children vested at the date of the deed. For if that had been understood as the opinion of the judge, the evidence, as before observed, would have been inadmissible, and the jury would have been told that it could have no bearing upon the case: instead of which, it had been before explained to them, that the object of the evidence was to disprove the delivery of the marriage settlement deed, and not to divest any interest that had become vested in the children. And in the conclusion of this part of the charge, the judge tells the jury—"These are all the circumstances relied upon as being inconsistent with the settlement deed, and these are questions for you. I do not wish to interfere with your duties. It is for you to say whether the deed was duly executed and *delivered*."

The jury had been told in a previous part of the charge, that delivery of the deed was essential in order to pass the title; and that this was a fact for them to decide, and it was in conclusion left to them in as broad a manner as could be done. The whole scope of the charge on this point left the evidence open for the full consideration of the jury, and the remarks of the judge are no more than a mere comment on the weight of evidence; and as such were addressed to the judgment of the jury, and not binding upon them. If a decided opinion had been expressed by the judge upon the weight of the evidence, it is not pretended that it would be matter of error to be corrected here. But the charge does not even go thus far, and it is believed by a majority of the court, that it is not justly exposed to the criticisms which have been applied to it.

In respect to that part of the charge, which comments upon the various deeds made by the parents, which were relied upon as inconsistent with the settlement deed, no objection has occurred to any member of the court except as to the comments on the deeds to Hill and Merritt, and the life leases to other persons. In respect to the deeds to Hill and Merritt one judge is of opinion that the statement "that these deeds are not inconsistent with the settlement deed" is incorrect in point of law, because those deeds contained a covenant of seisin, and under the settlement deed although Morris and wife had a right to convey the land, they were not in the actual seisin of it, and therefore such a covenant was inconsistent with the settlement deed. But the other judges are of opinion that this part of the charge is correct, because Morris and wife had, under the settlement deed, a power to convey in fee lands to a much greater amount, that it was not necessary to recite in their deed of sale their power to sell; and that the covenant of seisin being a usual muniment of title, and not changing in the slightest degree the perfection of the title actually conveyed, did not in point of law, whether there were a seisin or not, create any repugnancy between those deeds and the settlement deed. If the parties had in those deeds recited the settlement deed and the power to convey, and had then conveyed with the same covenants, the deeds could not have been deemed in point of law inconsistent with the power under the settlement deed; but would have been deemed a good execution of the power, and the covenants a mere additional security for the title.

The same judge is also of opinion that the life leases which were given in evidence not having been made in performance of the power

in the marriage settlement deed, are by their terms and effects so inconsistent with it, as to authorise the jury to find against its delivery on this ground alone, and that the circuit court erred in charging the jury, that the effect and operation of these leases was not a subject for their inquiry, and that their bearing on the cause depended on the intention of Morris.

To the other judges, however, the charge in this particular is deemed unexceptionable.

The judge decided that these life leases were unauthorised by the power. And the question was, what influence they ought to have upon the point of non-delivery of the settlement deed, they not deriving any validity or force under it. Were they acts of ownership over the property, which could not be explained, consistently, with the existence of the settlement deed; or were they acts, which though unauthorised, might fairly be presumed to be done without any intention to disclaim the legal title under that deed? In estimating this presumption, it is to be considered, that these were the acts of parents, and not of strangers. That it does not necessarily follow, because parents do unauthorised acts in relation to the estates of their children, they intend those acts as hostile or adverse to the rights of their children. Parents may from a sincere desire to promote the interests of their children and to increase the value of their estates, make leases for the clearing and cultivation of their estates, which they know to be unauthorised by law; but which at the same time they feel an entire confidence will be confirmed by their children. The very relation in which parents stand to their children, excuses if it does not justify such acts.

It will be rare, indeed, that parents may not confidently trust that their acts done bona fide, for the benefit of their children, will from affection, from interest, from filial reverence, or from a respect to public opinion, be confirmed by them. The acts of parents, therefore, exceeding their legal authority, admit of a very different interpretation from those of mere strangers. The question in all such cases is, what are the intentions and objects of the parents? Did they act upon rights which they deemed exclusively vested in themselves? Or did they act with a reference to the known interest vested in their children? It appears to the majority of the judges, that the circumstance of the life leases was properly put to the jury, as a question of intention; and that the jury were left at full liberty to deduce the proper conclusion from it.

The next point is, as to the improvements claimed by the tenant in ejection, under the act of New-York, of the first of May, 1786. That act declares, "that in all cases of purchases, made of any forfeited estates, in pursuance of any of the laws directing the sale of forfeited estates, in which any purchaser of such estates shall be evicted by due course of law, in the manner mentioned, &c. &c. such purchaser shall have like remedy for attaining a compensation for the value of the improvements by him or her made on such estate, so by him or her purchased, and from which he or she shall be so evicted, as is directed in and by the first clause, in the" act of the 12th of May, 1784.

The latter act declares that the person or persons having obtained judgment shall not have any writ of possession, nor obtain possession of such lands, &c. until he, she or they shall have paid to the person or persons possessing title thereto, derived from or under the people of the state, the value of all improvements made thereon after the passing of the act. Neither the act of 1784, nor of 1786, purports to give a universal remedy for improvements in cases of eviction by title paramount, but are confined to cases of confiscated estates, where the title comes by sale from the state.—However operative it may be as to citizens of the state, (on which it is unnecessary to give any opinion,) the question before us is, whether such improvements can be claimed in this case consistently with the treaty of peace of 1783. By the fifth article of that treaty it is agreed, "that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights." By the sixth article, it is agreed that "there shall be no future confiscations made, nor any prosecutions commenced against any person or persons, for or by reason of the part which he or they may have taken in the war; and that no person shall on that account suffer any future loss or damage, either in his person, liberty or property." We think that the true effect of these provisions is to guaranty to the party all the rights and interest which he then had in confiscated or other lands, in the full force and vigour which they then possessed. He was to meet with no impediment to the assertion of his just rights, and no future confiscations were to be made of his interest in any land. His just rights were at that time to have the estate, whenever it should fall into possession, free of all incumbrances or liens for improvements created by the tenants, for life, or by purchasers under the state. To deny him possession,

or a writ of possession, until he should pay for all such improvements, was an impediment to his just rights and a confiscation pro tanto of his estate in the lands. The argument at the bar supposes that there is a natural equity to receive payment for all improvements made upon land. In certain cases there may be an equitable claim, but that in all cases a party is bound by natural justice to pay for improvements made against his will, or without his consent, is a proposition which we are not prepared to admit. We adhere to the doctrine laid down on this subject in *Green vs. Biddle*, in 8 Wheaton's R. 1, 75, &c. &c.

We are of opinion that the claim of improvements in this case is inconsistent with the treaty of peace, and ought to be rejected.

A number of exceptions of a minor nature are spread upon the record, such as exceptions to the admission of evidence to prove the common practice to convey lands by way of lease and release; to the admission of the journals of the legislature; to the admission of the act of compromise between the state and John Jacob Astor; to the sufficiency of the title of Astor under the deed of the children of Morris and wife, to extinguish their title, &c. &c.

To all these we think it unnecessary to make any farther answer, than that they have not escaped the attention of the court; and that the court perceive no valid objection to the ruling of the circuit court respecting them.

Upon the whole, it is the opinion of this court that the judgment of the circuit court be, and the same is hereby affirmed, with costs.

—◆—

Washington, March 4th, 1830.

I hereby certify that the foregoing is a true copy of the opinion of the Supreme Court of the United States, in the case of James Carver, plaintiff in error, against the lessee of John Jacob Astor, as delivered by Mr. Justice Story, at January term, eighteen hundred and thirty.

RICH'D. PETERS,
Reporter of the decisions of the Supreme Court
of the United States.

IN ASSEMBLY,

March 29, 1830.

REPORT

Of a majority of the Committee on Public Lands,
on the petition of Gideon Castle.

The standing committee on public lands, to which was referred
the petition of Gideon Castle,

REPORTS :

That the petitioner represents, that in the year one thousand eight hundred and seven, he purchased of Orremel Gipson, lot number ninety-seven in the town of Camillus, in the county of Onondaga, and paid him five hundred dollars for the same ; that his deed was recorded in June, one thousand eight hundred and eight, in the clerk's office of Onondaga county, and that he went into possession of the lot at or about the date of his deed. He further states, that Orremel Gipson was a resident of Washington, in the county of Litchfield and state of Connecticut, and nephew and heir at law of Robert Gipson, who served for the lot, and to whom the same was patented in one thousand seven hundred and ninety. He further states, that he sold out the lot, except fifty-six acres, which, in one thousand eight hundred and fourteen, he leased to Gilbert Rose and his wife, for their lives, at an annual rent of one bushel of wheat ; that in one thousand eight hundred and nineteen, ejectments were commenced, to recover this lot as escheated land ; Rose made no defence, and the petitioner undertook to look to the interest of his tenants on that lot. For this purpose, he made an arrangement with the Attorney-General, Mr. Oakley, to take his affidavits of title before Thomas Barlow, Esq., a justice of the peace and commissioner, residing in Amenia, in the county of Dutchess ; and

[No. 348.]

that the Attorney-General agreed that if the petitioner did in that manner procure evidence of title to satisfy him, he would abandon the several suits.

That the petitioner procured the affidavits of several witnesses examined before the said Thomas Barlow, Esq., clearly proving his title to the lot, and delivered the same to Mr. Oakley, the Attorney-General, in May, one thousand eight hundred and twenty, when he declared himself perfectly satisfied with the title of your petitioner, and promised him to abandon said suits. The petitioner says that he rested perfectly satisfied and secure, until the spring of one thousand eight hundred and twenty-eight, supposing that said suits had been abandoned; that in June of that year, he was informed that the above fifty-six acres, leased to Rose and his wife, was advertised for sale by the state, and sold for about nine hundred and ten dollars. He further states, that he could have successfully defended said suits, and should have done it, had it not been for the arrangement with Mr. Oakley, and his belief that the suits were abandoned. He further states, that Rose and his wife are about seventy years of age. The petitioner has sworn to the above statements, and produced much other evidence to satisfy the committee of their truth. He has produced the affidavit of Jacob Chamberlin, of Amenia, aforesaid, who swears that he was well acquainted with Robert Gipson, deceased; that he was a soldier in the revolutionary army, in captain Marvin's company, in the second regiment of the New-York troops; that he was well acquainted with Orremel Gipsen, of Washington, in the county of Litchfield, in the state of Connecticut, and that he was known and reputed as the nephew and heir at law of said Robert Gipson, deceased, and that the said deponent had no doubt, from his familiar acquaintance with the family, that such was the fact. The affidavit of James Herrick, a son-in-law of the petitioner, is also produced. He swears, that in the spring of one thousand eight hundred and twenty, he was employed by the petitioner to procure evidence of his title to the lot; that he was present when the petitioner made the arrangement with Mr. Oakley; that Mr. Oakley agreed that the examination and affidavits of the witnesses should be taken by and before Thomas Barlow, Esq., of Amenia, and if the petitioner could procure two or three witnesses to make oath that Orremel Gipson was the lawful heir of Robert Gipson, the patentee, he would discontinue said suits; that the deponent, as the agent of the petitioner, did procure several, and he thinks six witnesses, of

whom he recollects the names of Syrus Delamater, William Skuke, Joseph Mitchell, and Judith McDole, to appear before the said Barlow, who severally made affidavits to the effect that Orremel Gipson, from whom the said Gideon Castle claimed title, was the nephew and heir at law of the said Joseph Gipson; that they were acquainted with the said Orremel Gipson and Joseph Gipson. This deponent was afterwards present with the petitioner, when he delivered said affidavits to Mr. Oakley, who expressed himself perfectly satisfied, and said he would have the suits discontinued. This deponent further says, that he has been informed and believes that most of the witnesses above mentioned are now dead.

The affidavit of the said Thomas Barlow, Esq. has also been produced to us; in which he states, that he well recollects, that in 1820, Gideon Castle came before him, with a number of witnesses; that the witnesses were sworn, and that their affidavits were satisfactory to prove that Orremel Gipson, of Washington in the State of Connecticut, was nephew and heir at law to the said Robert Gipson deceased. This witness further swears, that he was instructed by Thomas J. Oakley, then Attorney-General of this State, to make such investigation, and take the affidavits of the several witnesses.

A letter of Mr. Oakley, addressed to a member of the House of Assembly, upon this subject, has been submitted to your committee. He writes from recollection only, and does not appear to speak with entire confidence as to the accuracy of his memory. He says ejections were commenced to recover two lots claimed by the petitioner. He further says: "A number of affidavits were presented to me, relative to one of the lots, which I now recollect were considered satisfactory, although I cannot pretend to state their contents particularly. But as they had been taken ex parte, and as I knew nothing of the character of the men who made them, I did not deem it proper to act on them. They were handed by me to Gershom Powers, the agent of the land-office in relation to those escheated lands, with instructions to make inquiries into the facts, and report the same to me. I cannot remember that any report was ever made by him; and I have always supposed that the affidavits remained with him, or were deposited in the Attorney-General's office. I am quite sure I never saw them again. The suits against the lots were not discontinued, and judgments were finally obtained by the State against all of the tenants. I cannot now say with certainty to which lot those affidavits related, although my impression is that it was the Gipson lot."

It further appears to your committee, that after these affidavits had been delivered to Mr. Oakley, Mr. Powers called on the Hon. H. F. Mather, who had appeared as the attorney for the tenants on the Gipson lot, and requested him to go with him to see the tenants; stating that it would be better for them to confess judgments, and purchase under the State; as the sum they would have to pay under the appraisement would be almost nominal, and that it would be less expense for them than to defend the suits. They went to see the tenants; and they all, including Rose, agreed that their said attorney should confess judgments, except two, who owned small pieces; and as to these, the State never proceeded to get judgments.

It further appears to your committee, that the petitioner had no knowledge of this transaction, or that the said tenants had employed said attorney.

It further appears, that the petitioner and his tenants have paid the taxes on this lot, to the State and the United States, since the year 1800: That he paid at one time, September 1810, \$53.68; for which he has the Treasurer's receipt.

A majority of your committee are clearly of the opinion, that the State were not entitled to this lot as escheated land. They are also of the opinion, that if Mr. Oakley did not agree to discontinue the suits on the receipt of the affidavits taken before Mr. Barlow, (who, it appears, acted as the person or agent agreed on by the parties,) he must at least have agreed to postpone the suits, until Mr. Powers had time to investigate their merits, and report thereon. Upon no other supposition can we reconcile the fact, that your petitioner, after purchasing the lot, paying a large amount of taxes on it, and attending promptly to defend his title on hearing the State had claimed it, should have paid no further attention to the subject after his interview with the Attorney-General; not even to secure his interest, by purchasing in the title under the State.

For the purpose of weakening the excuse offered by the petitioner for the delay in presenting his petition, an affidavit has been presented, detailing a conversation between one of the tenants at a time when he was about to apply to the commissioners of the land-office to purchase of the State himself, and a son of the petitioner, showing that the son must have known at that time that the tenants had confessed judgments. The petitioner denies any knowledge of that conversation, or the subject matter of it, or of ever hearing of it at

any time, or that his son had any agency in the matter : but if it were otherwise, your committee cannot see that it has much bearing on the claim.

With the same view, another objection has been made, that the petitioner should have taken measures to have stopped the sale, on hearing that the land was advertised. In answer to this, the petitioner says that he did attend the sale, and forbid the same ; and that he supposed this was his correct course.

Your committee does not deem it important to inquire whether any course might have been adopted to prevent the sale ; as it does not appear that the relief asked for by the petitioner, can be varied by that fact.

The petitioner has presented a release of Rose and his wife, to their interest as lessees to said lot : but your committee entertain doubts whether the State had not succeeded to that unexpired interest, by the confession of judgment by Rose, and their possession consequent thereon. But if the views of your committee have been correct, the State would, in equity, be liable for a portion, if not all the back rents.

It appears from the report of the present Attorney-General, that the premises in question sold for \$897 : and your committee entertain some doubts as to the amount which should be paid to the petitioner, but have fixed on the sum of \$800, as being in their opinion equitable and just. The committee have prepared a bill accordingly, and I am directed to ask leave to introduce the same.

Respectfully submitted,

CHARLES SQUIRES,

In behalf of a majority of the Committee on Public Lands.

IN SENATE,

March 30, 1830.

REPORT

**Of the Commissioners of the Land-Office, on the
call of the Senate.**

The Commissioners of the Land-Office, in compliance with the resolution of the honorable the Senate, requiring them to report the reason for raising the appraisement on lot No. 14, Oneida Creek tract, in New-Stockbridge, the right to the purchase of which was ceded to Elias Rudo, by the certificate of the Surveyor-General, in the month of March, 1826, and also the amount which has been paid on said lot, have the honor to

REPORT—

That this subject was brought before the Legislature in 1827. What was then done in relation to it, will appear from the journals of the Assembly of that year, at pages 500 and 633. To these as containing the reason for raising the appraisement on the lot, the commissioners of the land-office respectfully refer. To this it is only necessary to add, in explanation, that the \$500 was added to the \$1200, at which the soil was appraised. The \$253, as the value of the improvements, made no part of the consideration. The date of the certificate, and the bond for the residue of the consideration,

was March 10, 1826 ; a payment of \$212 was then made. Nothing has since been paid.

Respectfully submitted.

SIMEON DE WITT, *Surveyor-General*,
A. C. FLAGG, *Secretary*,
GREENE C. BRONSON, *Attorney-General*,
SILAS WRIGHT, Jr. *Comptroller*,
A. KEYSER, *Treasurer*.

March 29, 1830.

IN ASSEMBLY,

March 20, 1830.

REPORT

Of the Select Committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York, relative to quarantine regulations.

Mr. Ostrander, from the select committee consisting of the delegates attending this House from the city and county of New-York, to whom was referred the memorial of the mayor, aldermen and commonalty of the said city,

REPORTED—

That they have had the subject matter referred to them under consideration; from which it appears, that by the present provisions of the health law and quarantine regulations, individuals arriving in vessels at the port of New-York, under circumstances precluding the idea of danger from fever or contagion, are subjected to a detention of ten days quarantine, which is alleged to be oppressive on them, and injurious to commerce. The memorialists are desirous of extending relief to persons in this situation; many of whom are foreigners, resorting to the city for the purposes of trade and commerce; carrying on a lucrative business with the city, which is in danger of being diverted to other ports where restrictions are less rigorous. It is proposed to vest in the health officer a discretionary power of permitting persons, under such circumstances, to proceed to the city, after undergoing the necessary examination.

The committee are of opinion that the request of the petitioners is reasonable and proper, and ought to be granted; and they have accordingly prepared a bill, and ask leave to introduce the same.

IN ASSEMBLY,

March 24, 1830.

REPORT

Of the Committee on Public Lands, on the petition of John N. Quackenbush and others, relative to a certain lot of land in the city of Albany.

Mr. Gosman, from the committee on public lands, to which was referred the petition of John N. Quackenbush and others, praying for the grant of a lot of land in the 5th ward of the city of Albany, for religious and benevolent purposes,

REPORTED :

That it appears that the State owns a small lot of land on Arbour-Hill, in the suburbs of this city, which is said to be of little value. The inhabitants in that vicinity are represented as an indigent but respectable class of citizens : They are remote from those means of scientific, moral and religious improvement, which the occupants of the denser parts of this city so happily enjoy.

Encouraged by the aid of some benevolent gentlemen of this city, who are also petitioners, they seem to be disposed to make an effort to provide means of instruction for their increasing population, and contemplate the erection of a building for the purposes of education, and the advancement of virtue and piety.

They deem the above mentioned lot very suitable for this purpose, and pray the Legislature to grant the same to trustees for their benefit.

The committee are convinced of the truth of the representations of the petitioners ; and satisfied of their sincerity, would cheerfully recommend suitable encouragement to their laudable efforts, did not an insuperable obstacle interpose. The lot in question became the property of the state in 1817, by the foreclosure of a mortgage for money loaned, on which, as is usual in such cases, no small loss accrued ; it is of course appropriated to the common school fund, and is therefore inaccessible.

It is expected, however, that the lot will be offered at public sale in a very short time : which circumstance will unquestionably facilitate the accomplishment of the objects of the petitioners ; for the committee feel assured that the wealthy and benevolent individuals who have united in the prayer of the petitioners, will not hesitate to afford to this very meritorious charity, that more efficient aid which their just efforts has failed to produce, which circumstances unequivocally demand, and which the constitution precludes the Legislature from extending. The committee submit the following resolution :

Resolved, That the petitioners have leave to withdraw their petition.

IN ASSEMBLY,

March 24, 1830.

REPORT

Of the Committee on the incorporation of Charitable and Religious societies, on the petition of the First Presbyterian Union Society of the town of Pultney, relative to a certain lot therein.

Mr. Stilwell, from the committee on the incorporation of charitable and religious societies, to whom was referred the petition of the First Presbyterian Union society, of the town of Pultney, in the county of Steuben, praying that a law may be passed authorising them to exchange certain real estate in said town, now belonging to said society,

REPORTED :

The petitioners set forth that they are possessed in fee of a certain lot of ground in the said town known by the name of the Gospel or Ministerial lot. That the said lot was derived by deed of gift from the Pultney estate : that it was intended by the grantor for a glebe or parsonage ; and that the ends for which it was designed, cannot effectually be attained without disposing of the same. They therefore pray that the Legislature will pass an act authorising them to exchange said lot for one which will better accommodate the society.

Your committee have not thought it necessary to examine into the propriety of the application founded on the necessity of the case, as they are satisfied this is a proper subject for judicial investigation.

By referring to the 11th section of an act passed April 5, 1813, we find it declared to be lawful for the chancellor of this state, upon
[No. 353.]

the application of any religious corporation, in case he shall deem it proper, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of monies arising therefrom, by the said corporation, to such uses as the same corporation, with the consent and approbation of the chancellor, shall conceive to be most for the interest of the society to which the real estate so sold did belong. This clause it is thought covers the case of the petitioners.

Your committee are of opinion that all questions properly belonging to the judiciary department of our government, should not be subjects of legislative investigation. The courts are the proper tribunals for the ascertaining of facts and the distribution of justice. Before them witnesses can be summoned to appear, and the merits and demerits of the case fully understood ; whereas, before the Legislature, testimony on one side *only* is generally produced ; witnesses cannot easily be confronted, and the rights of individuals are frequently put in jeopardy. Every application, therefore, to the Legislature should clearly show that the case does not come within the jurisdiction of the judiciary, and that there is no other way by which relief can be obtained.

Your committee are well assured that the court of chancery has power to grant relief in the premises, and until it shall appear that the judiciary are not able to extend to the petitioners that assistance which the nature of the case requires, they will feel themselves constrained to deny the propriety of any interference on the part of the Legislature.

Your committee beg leave to recommend the adoption of the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted, and that the petitioners have leave to withdraw their petition.

IN ASSEMBLY,

March 24, 1830.

REPORT

Of the Select Committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York, relative to masquerades in said city.

Mr. Stilwell, from the select committee to whom was referred the memorial of the mayor, aldermen and commonalty of the city of New-York, praying for the passage of a law more effectually to prevent masquerades in said city,

REPORTED :

The memorialists represent that the law passed at the last session of the Legislature, imposing a fine of one thousand dollars upon any person being the proprietor of any theatre, circus, or any public place, who should permit any masquerade, or masquerade ball, to take place on their premises, has not had the effect desired.

As a proof of its insufficiency to remedy the evil complained of, they further state, that not long since a masquerade was publicly advertised and given in one of the theatres of that city, and attended by a large concourse of people. That it was done in open violation of the law, and that the offenders will use every effort to defeat the collection of the fine.

The committee are fully convinced of the evil tendency of this species of amusement, and its demoralising effects : they are satisfied the Legislature of last session intended to put a stop to masquerades, and that the act passed had not in contemplation the raising a revenue from this source, or that masquerades should be considered any the less evil by the payment of the fine imposed. They are also well assured there is no way *effectually* to suppress this growing

evil in the city of New-York, but by the passing of a law declaring it a common nuisance, and punishing offenders with fine and imprisonment. The committee are informed that a law of this kind has been in force for the last twenty years in Pennsylvania, with the most beneficial effects, having completely prevented all amusements of this kind.

They have therefore prepared a bill in conformity with their views, and ask leave to introduce the same.

IN ASSEMBLY,

March 30, 1830.

REPORT

Of the Commissioners of the Land-Office, on the petition of Thomas Dean and Samuel Dakin.

The commissioners of the land-office, on the memorial of Thomas Dean and Samuel Dakin, referred to them by the honorable the Assembly,

RESPECTFULLY REPORT—

That the memorialists set forth that by an act of the legislature passed March 10, 1828, they were appointed commissioners to settle the estate of Mary Doxstader, an Indian woman, late of the Stockbridge tribe of Indians, deceased, and found it necessary, in the execution of their duties under said act, to dispose of the real estate that belonged to her as well as what she held by title derived only from the tribe, as what had been granted to her by letters patent from the state. Among the lands stated by the memorialists as owned by Mary Doxstader, and disposed of by them, are the following, for which she had only the Indian title, to wit: in that part of New-Stockbridge, the survey of which was reported by Peleg Gifford, in May 1825, lots No. 20, the north half of lot No. 16, lot No. 19, and 22, except those parts of them which have been patented to her, and lot No. 32, except 50 acres of the same also patented to her. The memorialists having been advised that the legality of the conveyances which they have given of such unpatented lands may be questioned, pray for an act of the legislature to confirm them. They have never been ceded to the state.

For the purpose of executing the act entitled "An act for the relief of Mary Doxstader," passed April 23, 1823, a certificate was produced from the town clerk of the New-Stockbridge Indians, stating that she had, according to the deeds on their records, honestly obtained, paid or given her bonds for the lots therein named, among which are the above mentioned No. 19 and 32. It will then be incumbent on the memorials to show the Indian title only for lots No. 16 and 20.

Respectfully submitted.

SIMEON DE WITT, *Surveyor-General.*

GREENE C. BRONSON, *Attorney-General.*

SILAS WRIGHT, Jr. *Comptroller.*

A. C. FLAGG, *Secretary of State.*

March 30, 1830.

IN ASSEMBLY,

March 24, 1830.

ANNUAL REPORT

**Of S. R. Howlett, Inspector of Beef and Pork for
the County of Onondaga.**

Onondaga County, N. Y.

Bill of beef and pork inspected, 1829.

Mess pork,.....	27 bbls.
Prime “	70 “
Thin mess pork,.....	2 “
Soft prime “	1 “
Cargo “	1 “
Mess beef,.....	370 “
Prime beef,	750 “
Cargo beef,	62 “

Amount of value, \$7,420 00

Amount of fees for inspecting, 192 45

The above is a copy of beef and pork inspected by me,

- S. R. HOWLETT.

IN ASSEMBLY,

March 31, 1830.

REPORT

Of the Committee on the Judiciary, on the statutes concerning marriage, and the solemnization thereof.

Mr. Vanderpoel, from the standing committee on courts of justice, in pursuance of a resolution of this house, instructing them to inquire whether any, and if any, what amendments and alterations are necessary to be made in chapter 8th of title 1st of the 2d part of the Revised Statutes, concerning "*Marriage, and the solemnization and proof thereof,*"

REPORTS :

That by the 8th section of the aforesaid article and title, it is provided, "that marriages shall be solemnized only by ministers of the gospel, priests of every denomination, mayors, recorders and aldermen of cities, and judges of the county courts and justices of the peace."

The 11th section of said article and title provides, that if either of the parties between whom the marriage is to be solemnized shall not be personally known to him, the minister or magistrate shall require proof of the identity of such party, by the oath of some person known to him, *which oath any magistrate is thereby authorised to administer.*

Your committee cannot perceive the expediency of authorising ministers and priests to solemnize marriage without investing them with power to do and perform every official act necessary to the legal solemnization thereof. The experience of your committee

teaches them, that a great majority of the candidates for matrimony invoke the offices of the clergy in preference to those of the civil magistrate. Although marriage before the adoption of the late Revised Statutes, was only a civil contract, capable of being effectually made in presence of any competent witness, yet in view of those solemn obligations which it so emphatically involves, it has been the habit of our citizens to summon the ministers of the gospel to bear witness to this sacred compact, rather than call to witness the civil functionaries of the land. Whether this practice has resulted from the consideration to which your committee have just adverted, or from any other cause, yet so it is, that custom and fashion have made the clergy the most frequent masters at the nuptial ceremony.

Your committee cannot believe that the legislature intended, by withholding from ministers the power of administering the oaths required to prove the identity of the parties, to induce a change in the habits of the community in the selection of witnesses to the marriage contract, or to divert from the ministers the little emolument they had derived in the shape of marriage fees. And although your committee are aware of the objection that may be urged against the principle of investing individuals not holding a civil office with the power of administering oaths, yet, as the legislature have created ministers and priests *officers* for the purpose of solemnizing marriage, your committee can conceive no valid objection to the clothing them with all the powers necessary to render their offices effective. Your committee, therefore, propose to authorise them to administer oaths in all cases where they shall find it necessary to examine witnesses as to the identity of the parties who present themselves to them for marriage.

The necessity for granting this power to the clergy will be more apparent when it is recollected, that in many sections of the state a magistrate may reside at a considerable distance from the minister who is applied to, to perform the marriage ceremony. The trouble and expense of securing the attendance of a justice to administer oaths to witnesses, are burthens and embarrassments from which, in the opinion of your committee, the parties ought to be exempted.

The 34th section of article 2d of the aforesaid title provides, that "a bill to avoid a marriage irregularly solemnized and not consummated, may be brought by either of the parties, or by the parent, guardian or next friend of either party, who may be a minor during

the life time of the other party, and after the death of one of the parties, by any relative of such deceased party."

This section ought, in the opinion of your committee, to be abrogated. It is founded upon the assumption that an irregular or informal solemnization is a valid ground for avoiding a marriage. This is not one of the grounds for dissolving the marriage tie, as recognised by this same chapter and article. The 20th section of the 2d article enumerates with great clearness the causes for which a marriage may be avoided or dissolved. According to this section, an irregular or informal solemnization is not a valid ground for dissolving this solemn compact. Your committee have been informed that the revisers proposed this as one of the grounds for avoiding marriage, and that the legislature rejected this proposition.

The 34th section above alluded to, was proposed to carry out the principle of the proposition thus rejected, and it is most obvious that the legislature inadvertently neglected to strike out from the chapter, as presented by the revisers, this section, so inconsistent with the 20th section, which purports to specify the only causes for which a marriage may be avoided.

The 10th section of the 1st article of the same chapter and title, requires the officer solemnizing a marriage to ascertain among other things, the ages of the parties. The 13th section requires him to furnish, upon request, a certificate, containing among other things, the ages of the parties; and the 16th section, which relates to the contents of the certificate to be filed with the town clerk, also requires it to specify the ages of the parties. These provisions are, as your committee believe, extremely odious, unnecessary, and call for immediate repeal. Many of the candidates for matrimony feel a strong repugnance to emblazoning their ages upon the public records, according to the requirements of these sections. The 2d section of the 1st article of this title establishes the age of consent in males, at the age of seventeen, and in females, at the age of fourteen. Your committee think it is sufficient that the magistrate should be satisfied, that the parties have attained the ages of consent, and that the inquiry ought not to be extended to the impertinent and oft-times annoying extremes now authorised by law. Your committee therefore, beg leave to introduce a bill to carry into effect their views, as contained in this report.

IN ASSEMBLY,

March 24, 1830.

REPORT

Of the Select Committee, on the petition of the supervisors of the county of Washington, relative to a certain tax.

Mr. Russell, from the select committee to whom was referred the petition of the supervisors of the county of Washington, praying that they may be authorised to raise, upon the county, and upon the town of Kingsbury in the said county, a certain sum of money by tax,

REPORTED :

That it is represented to the committee that the tax which was collected from the Washington and Warren bank, in the years 1825, 1826, 1827 and 1828, under the tax law of 1823, was not applied as the law required, but that the tax on that bank was applied as other taxes raised, levied and collected in said county and town of Kingsbury (in which town said bank is situated) were applied; which was to the payment of the town expenses of the town of Kingsbury and the county expenses, as other taxes were applied.

The truth of these representations the committee have no reason to doubt. From this state of facts it appears, that the amount of tax raised on the capital stock of this bank has not been remitted to the Treasurer of the State, as by law it should have been done, but that a part of the tax has been applied to the payment of the ordinary town expenses of the town of Kingsbury, and the residue to the ordinary expenses of the said county; from which, it appears just that the money should be raised from the said town of Kingsbury, and the said county, proportionably as the same was disbursed for their benefit respectively.

It also appears, from an inspection of the Comptroller's books, that the arrears of taxes from that bank, from 1825 to 1828, both inclusive, is \$2,321.18, exclusive of interest, which is annually cast and added to the principal, according to the rules of that office.

The petitioners pray the passage of a law authorising them to raise by tax a sum equal to the amount so collected and misapplied, in a proportion between the county and this town, precisely the same as that in which the money was expended. This the committee believe to be reasonable and just, and ought to be granted; and have prepared a bill for that purpose, and directed their chairman to ask for leave to introduce the same.

IN ASSEMBLY,

March 25, 1830.

REPORT

Of the Select Committee, on the petition of Isaac J. Cole, commissioner, &c.

Mr. Allison, from the select committee to whom was referred the petition of Isaac J. Cole, praying for the passage of an act to confirm his acts as commissioner to take the acknowledgment of deeds, &c.,

REPORTED—

The petitioner represents, that while residing in the town of Hampstead, in the county of Rockland, he was appointed by the supervisors and judges of said county, a commissioner to take the acknowledgment of deeds, mortgages, &c. In 1826, about fifteen months previous to the expiration of his office, he moved to the town of Orange, in the same county, and conceiving himself still to be a commissioner, took the acknowledgment of deeds, &c. in the town of Hampstead, from which he had removed, while living in the town of Orange. His term of office about to expire, it appears in the fall of 1827, he was re-appointed to the office, but soon after, and before the commencement of the political year, he removed again to the town of Hampstead, when, according to the instruction of the county clerk, about the 1st of January, 1828, he was again sworn into office, and officiated therein until the summer of 1829, when doubts were suggested as to the legality of his acts, in consequence of his having removed from the town in which he resided when he was appointed; and he therefore prays an act may be passed to confirm his acts as a commissioner.

Your committee are of opinion that the prayer of the petitioner is reasonable and ought to be granted, and have prepared a bill, and ask leave to introduce the same.

IN ASSEMBLY,

March 27, 1830.

REPORT

Of the Select Committee, on the memorial of the mayor, aldermen and commonalty of the city of New-York, relative to the equalization of taxes in said city.

Mr. Ostrander, from the select committee to whom was referred the memorial of the mayor, aldermen and commonalty of the city of New-York, praying for the passage of an act to amend an act respecting assessments and collection of taxes in the city of New-York, passed April 6th, 1825,

REPORTED:

That they have had the subject under consideration, from which it appears that great inequality has been found to exist in the valuation of real estate as made by the assessors of the different wards in the city of New-York, the petitioners therefore pray that the act may be so amended as to embrace such provisions as will require the assessors to form a board of assessors to meet at proper times and places, for the purpose of equalizing their assessments, so as to produce a just and uniform rate of assessment of all the wards in said city, in order that each ward may pay its just proportion of tax.

Your committee beg leave to propose a further amendment to said act for the purpose of equalizing assessments on personal property, and to enable the assessors to obtain correct information from tavern-keepers, and boarding-house keepers and others, to the end that all persons residing in the above houses referred to, which are liable to taxation, may be assessed according to law.

Your committee are therefore of opinion, that the prayer of the petitioners, is reasonable and ought to be granted.

Your committee have therefore examined the bill drawn up for that purpose, and made some amendments thereto, and ask leave to introduce the same.

IN ASSEMBLY,

March 27, 1830.

REPORT

Of the Select Committee, on the petition of William Campbell, crier, &c.

Mr. Gansevoort, from the select committee to which was referred the petition of William Campbell, crier of the court of oyer and terminer and general jail delivery, and of the general sessions of the peace for the county of Albany,

REPORTED :

That the petitioner has officiated as crier for those courts since the year 1823. That it has been represented to your committee that the supervisors of the county of Albany have always allowed to the petitioner his fees as crier for the court of general sessions of the peace of that county, but have not allowed his fees as crier of the courts of oyer and terminer and jail delivery of that county.

It is the opinion of the committee, that the petitioner has as fair and just a claim for his fees as crier of the courts of oyer and terminer and jail delivery, as of the courts of general sessions of the peace ; and the committee are informed that such allowances have always been made in the courts of Oneida, and it is believed in the other counties of the state.

The committee therefore recommend the passage of a law authorising and requiring the supervisors of the county of Albany, to audit, allow and pay to the petitioner the like fees for his services as
[No. 365.]

crier of the courts of oyer and terminer and general jail delivery, as is allowed by law for like services in the court of general sessions of the peace of the said county ; and have directed their chairman to ask leave to introduce a bill.

IN SENATE,

April 1, 1830.

MESSAGE

From the Acting Governor, transmitting certain Resolutions of the Legislatures of the state of Delaware and Ohio, and also a Communication from the Governor of Vermont.

TO THE SENATE,

GENTLEMEN,

I have the honor to lay before you, certain resolutions of the Legislatures of the states of Delaware and Ohio, and also a communication from the governor of Vermont which have been forwarded to me for that purpose.

E. T. THROOP.

Albany, March 31, 1830.

RESOLUTIONS.

*In the House of Representatives, }
January 20, 1830. }*

The committee to whom was referred so much of the Governor's message as relates to the Tariff of the United States, and the communication of Virginia, upon that subject, have bestowed on the subject that consideration which its importance demands.

The Laws of the United States for the protection of domestic manufactures, have been so often debated in Congress, and so repeatedly pronounced to be in strict accordance with the spirit and meaning of the constitution of the United States, that your committee deem it wholly unnecessary to enter into any argument upon the subject.

They, therefore, recommend the adoption of the following resolution :—

Resolved, by the Senate and House of Representatives of the State of Delaware, in General Assembly met, That the tariff of 1828, accords with the spirit of the constitution of the United States, and is a protection to home industry, from the overwhelming influence of foreign rivalry.

Resolved, That the Governor of the state be requested to communicate the foregoing resolution to the executive of the several states of the United States, with the request that the same be laid before their respective Legislatures.

Resolved, That the Governor be further requested to transmit copies of the same resolution to the Senators and Representative of Delaware in the Congress of the United States; with the request to the Representative, and instruction to the Senators, that the same be laid, by them, before their respective houses.

JOSHUA BURTON,
Speaker of the House of Representatives.
P. SPRUANCE, JR.
Speaker of the Senate.

Adopted at Dover, Jan. 26, 1830.

OFFICE OF THE SECRETARY OF STATE, }
Dover, (Delaware,) March. }

I certify the foregoing to be a true copy of the original roll, remaining on file in this office.

S. M. HARRINGTON.
Secretary of State.

EXECUTIVE DEPARTMENT, }
Dover, March 16, 1830. }

SIR,

I have the honor to transmit to your Excellency, a resolution of the General Assembly of the state of Delaware, relative to the Tariff

of 1828; and to request, that the same be laid before the Legislature of the state over which you preside.

I have the honor to be,

Very respectfully,

Your obedient servant,

DAVID HAZZARD,

To his Excellency the Governor of New-York.

EXECUTIVE OFFICE, }
COLUMBUS, OHIO, 1st March, 1830. }

SIR :

I forward to you the following document in pursuance of a request of the General Assembly of Ohio.

I have the honor to be, respectfully,

ALLEN TRIMBLE.

Resolved by the General Assembly of the state of Ohio, That they concur in the opinion of the Legislature of Pennsylvania, as expressed in the following resolution :

"Resolved by the Senate and House of Representatives of the commonwealth of Pennsylvania, in general assembly met, That the Tariff of eighteen hundred and twenty-eight accords with the spirit of the constitution of the United States, and that it maintains the true principles of protection to the industry of the country against foreign policy and legislation."

Resolved, That the Governor be requested to transmit a copy of the foregoing resolution to each of the Governors of the several states of the Union, with a request to have the same laid before their respective Legislatures; and also, forward copies of the same to each of our senators and representatives in Congress.

THOMAS L. HAMER,

Speaker of the House of Representatives.

ROBERT LUCAS,

Speaker of the Senate.

February 22, 1830.

SECRETARY OF STATE'S OFFICE, }
COLUMBUS, OHIO, 28th Feb., 1830. }

I certify the above to be a correct copy of the original remaining in this office.

JOHN McLENE,
Secretary of State.

STATE OF VERMONT, }
 EXECUTIVE DEPARTMENT, }
Craftsbury, Jan. 28th, 1830.

To His Excellency ENOS T. THROOP, Esq.

Governor of the State of New-York :

I have the honor to transmit to your Excellency a copy of a resolution passed by the General Assembly of the state of Vermont, at the late session, which is as follows :

Resolved, (the Governor and Council concurring herein,) That the senators of this state, in the Congress of the United States, be instructed, and the representatives be requested, to use their influence to cause an act to be passed by Congress for constructing fortifications on the north point of Vineyard, Isle la Motte, and on the great shoals between said point and Point-au-Fer, in the state of New-York, and for making the necessary appropriations.

In General Assembly, Oct. 23d, 1829. Read and passed.

T. MERRILL,

Clerk.

In Council, Oct. 28th, 1829. Read, and resolved to concur.

G. B. SHAW,

Secretary.

The defenceless situation of lake Champlain against hostile approaches from that portion of it which lies within the province of Lower Canada, and the consequent insecurity of the settlements on the borders of the lake, in the event of a war with Great Britain, has induced the General Assembly of this state to invite the attention of the general government to this subject. An opinion prevails that such fortifications may be erected between Point-au-Fer, in the state of New-York, and the north point of Isle-la-Motte, as will afford complete protection to all that part of the lake situated to the south of those places. As this subject must be equally interesting to a portion of the citizens of your state, I have been induced to communicate to your Excellency the measures adopted by this state, believing, if the Legislature of New-York shall entertain similar views of its importance, it will cheerfully unite with Vermont in bringing the subject before the general government.

I have the honor to be,

With great respect,

Your Excellency's obd't. serv't,

SAMUEL C. CRAFTS,

Governor of Vermont.

IN ASSEMBLY,

March 26, 1830.

REPORT

Of the Committee on Public Lands, on the petition of sundry inhabitants of the towns of Marshall and Kirkland, in the county of Oneida.

Mr. Gosman, from the committee on public lands, to which was referred the petition of sundry inhabitants of the towns of Marshall and Kirkland, in the county of Oneida,

REPORTED—

That the petitioners are occupants of lands adjoining the tract set apart for the Brothertown Indians. They complain that by a new survey of said tract, according to which the superintendents of said Indians execute deeds, an encroachment is made upon their several farms : that the ancient land-marks to which the petitioners have conformed, and still desire to conform, are visible, and are transcended by the east line of the Brothertown tract, which they allege contains some hundreds of acres more than was designed for them. Of this encroachment they complain, and pray for legislative aid to settle the difficulty.

The committee have been unable to learn any facts by reference to which this matter might be adjusted ; none such appear in the office of the Surveyor-General. The committee are therefore of opinion, that, as this is altogether a question of title between the claimants of lands, the only proper mode of determining it is by resort to a court of justice. They therefore propose the following resolution :

Resolved, That the petitioners have leave to withdraw their petition.

THE UNIVERSITY OF CHICAGO
PRESS

IN SENATE,

April 1, 1830.

Communication from the Commissioners of the
Land-Office.

To the Legislature of the State of New-York.

The Commissioners of the land-office beg leave to lay before the legislature the following subjects, which in their opinion, require further legislation, in the one case, to enable the commissioners to protect the interests of the state—and in the other, to enable the accounting officers of the state to make a proper distribution of monies paid between the several funds of the state.

On the 25th day of March, 1819, John V. N. Yates mortgaged to the state three lots of land, distinguished as lots Nos. 13, 14 and 15, on the north side of State-street continued, and two lots of land distinguished as lots Nos. 25 and 26, on the north side of Lydius-street in the city of Albany, for a loan of one thousand dollars. The mortgage was foreclosed in chancery in July, 1825, and the mortgaged premises were bid in for the state by the Attorney-General, for the sum of thirteen hundred and fifty dollars—that being the amount at the time due to the state. The release to the state was filed in the Secretary's office in the month of July, 1829. The reason for this delay in perfecting the title in the state to these premises, was the discovery that the title of the mortgagor was encumbered at the time of giving the mortgage, and had become further encumbered by charges and assessments subsequent to that time; and it was proposed to take some proceeding in chancery to vacate

the sale, as the facts were unknown to the Attorney-General when he bid in the premises upon the mortgage.

During the last summer, however, it was concluded to obtain the release, and to endeavor to save to the state what could be secured from the lots themselves.

Upon examination it was found that all the lots were subject to an annual quit-rent to the corporation of the city of Albany, and that the power to re-enter for the non-payment of these rents was retained in the said corporation. The amount of quit-rents due and unpaid upon the Lydius-street lots, as given to the commissioners by the corporation, is one hundred and seventy-four dollars sixty-two cents, which does not include the commutation of the said rent. It is questionable, in the opinion of the commissioners, whether any thing can be saved by the discharge of the existing incumbrances upon these two lots.

Upon the three State-street lots the following incumbrances are found, to wit :

Quit-rent,	\$9 00
Excavating, paving, &c. the street in front of these lots, .	196 88
Bill for repairing street and side-walk in front of State-street lots,	14 43
Making drain in State-street, opposite these lots,	23 42
	<hr/>
In all, \$	243 73
	<hr/>

All these sums are due to the corporation, or to persons who have done the work under their direction, and form liens upon the lots, and for which they can sell them for terms of years sufficient to produce the money.

Under the impression that the power existed by the present laws, to discharge these liens upon these lots, and to commute the quit-rents upon them, a negotiation was commenced with the corporation, and definite terms for the payment of the charges and for the commutation of the rents upon the State-street lots, were obtained, and the release of the corporation for these lots was executed and tendered to be delivered upon the payment of the sums above mentioned.

But upon examining the powers of this board, and also of the board consisting of the Surveyor-General, Attorney-General and Comptroller, and of the Attorney-General, with the advice and consent of the Comptroller, (see chapter 8, title 8, sections 2, 7 and 8, and chapter 9, title 5, section 6 of the 1st part of the Revised Statutes,) the commissioners became satisfied that none of the said provisions were broad enough to include this case, and therefore, that the existing Statutes have not empowered any of the officers of the state to discharge from incumbrance the title to these lots, so that they may be sold, and a clear title given by the state.

All these lots have been appraised during the past summer, and the Lydius-street lots were valued at two hundred dollars each, and the State-street lots at seven hundred dollars each, upon the supposition that the titles to all the lots were clear of incumbrance. This valuation will convince the legislature that authority should be given to pay off the incumbrances upon the State-street lots, at least ; and that by doing so, some part of this loan may be saved to the state, although the commissioners are inclined to the belief that the lots cannot be immediately sold at the full amount of their appraised value.

They therefore recommend that a law may be passed authorising this board to pay the charges, assessments and incumbrances which may exist upon all or any of the said lots, if in their discretion they shall think it for the interest of the state to do so.

The other case which the commissioners would represent to the legislature has arisen out of the several acts in relation to the lands belonging to the canal fund.

Pursuant to the act, chapter 91 of the Laws of 1826, the commissioners did, on the 25th day of April, 1826, appoint the Hon. John Griffin, of the county of Allegany, an agent to prosecute for trespasses upon the lands ceded to this state by the Holland Land company, and to do all other acts and things by the said act authorised. He has remained such agent up to the 17th instant, and the following payments have been made to him for his services, to wit :

Paid to John Griffin, agent, &c.	July 27, 1827,	\$80 00
" " " "	April 14, 1829,	94 00
" " " "	March 17, 1830,	101 32
		<hr/>
Total,		<u>\$275 32</u>

On the 10th May, 1828, and pursuant to the same act, James M'Glashan and John Griffin were appointed by the board to explore and survey the said lands, so far as might be necessary to divide the same into large lots or tracts, with a view to a contemplated sale; to obtain and transmit to this board copies of the field notes of the original survey of the said land in the office of the Holland land company, together with copies of their maps of the same, and to distinguish their allotments upon such copies of the said maps. The returns of survey, together with the copies of the field notes and maps, and the allotment of the said surveyors, and their appraisement of tracts as divided and set apart by them, were made to this board on the 3d instant, and were accepted by the board. Pursuant to this survey and appraisement, it is intended to offer the said lands for sale during the present year, and in the manner best calculated, in the opinion of the board, to facilitate the sale thereof; in any event, making the said appraisement the minimum price of any part of the said lands.

In the mean time, the following payments have been made to the said surveyors for their services and expenses, and in full for obtaining all the copies of papers, maps, &c. and of performing the whole duties of their appointment, to wit:

On the 22d September, 1829, paid to surveyors, &c.	\$100 00
8th March, 1830, " " "	1,603 00
	<hr/>
In all,	\$1,703 20
Add to this the payments above mentioned, made to	
John Griffin, as agent, &c.,.....	275 82
	<hr/>

And the whole payments made, will be \$1,979 02

All these payments have been made out of the general fund, and the commissioners believe they ought to be transferred to the canal fund. They therefore recommend that a law should be passed directing the Comptroller to transfer upon the books of his office, the above amount from the general fund, and to charge the canal fund with it.

It may be worthy of suggestion, whether these provisions ought not in all respects to be general, and whether, hereafter, the expen-

ses of the survey and appraisement of any lands belonging to any of the special funds of the state, ought not to be made chargeable to the funds respectively to which the lands may belong.

Respectfully submitted.

SILAS WRIGHT, Jr. *Comptroller.*

A. C. FLAGG, *Secretary.*

SIMEON DE WITT, *Surveyor-General.*

Dated Albany, 31st March, 1830.

IN ASSEMBLY,

March 29, 1830.

REPORT

Of the Select Committee, on the petition of the inhabitants of the town of Gerry, relative to certain town officers therein.

Mr. Hazeltine, from the select committee to whom was referred the petition of the inhabitants of the town of Gerry, for the confirmation of the election of town officers in that town, at the last annual town-meeting therein,

REPORTED :

That it appears from the petition that doubts have arisen in said town in relation to the validity of the choice of town officers at the last annual town-meeting therein, in consequence of the votes then taken having been canvassed after the setting of the sun on the day of meeting.

By the 16th section of the second article of title two of the eleventh chapter of the first part of the Revised Statutes, it is provided, that town-meetings shall be kept open only in the day time, between the rising and setting of the sun; and that, if necessary, they may be held two days successively, and no longer. By the 7th and 9th sections of the first article of title third of the same chapter, it is provided, that at the close of every election by ballot, the presiding officers shall proceed publicly to canvass the votes; which canvass, when commenced, shall be continued without adjournment or interruption until the same be completed; and that when the canvass is completed, a statement of the result shall be entered at length by the clerk of the meeting, in its minutes, and publicly read by him to

[No. 369.]

the meeting. This latter direction seems to imply that the votes shall be canvassed in open town-meeting, and that the canvassing is the act of the meeting through its officers. With this idea the provisions of the statute, declaring that town-meetings shall be kept open only between the rising and the setting of the sun, and that the canvass when commenced, shall be continued without interruption or adjournment, until it is completed, seem to conflict. There is an ambiguity in the terms of the law, in the absence of judicial decisions upon the subject, which may well have given rise to the doubts of the petitioners.

Although your committee are not prepared to say that a confirmation of the election is absolutely necessary in consequence of the alleged irregularity of the canvass; yet, to prevent any controversy upon the subject, and the numerous embarrassments resulting from the exercise of questionable or *questioned* authority, they deem it expedient that an act be passed to confirm the election of town officers in the town of Gerry.

They have accordingly drawn a bill for that purpose, which they ask leave to introduce.

IN ASSEMBLY,

April 1, 1830.

REPORT

Of the Comptroller, in obedience to a Resolution of
the Honorable the Assembly, of the 30th of March.

STATE OF NEW-YORK, }
COMPTROLLER'S OFFICE. }

The Comptroller, in obedience to the following resolution of the
honorable the Assembly,

"STATE OF NEW-YORK, }
In Assembly, March 30, 1830. }

Resolved, That the Comptroller be directed to report to this
house, whether the president and cashier of the bank of Washington
and Warren, for the time being, have made yearly returns under
oath to such public officer, as by law is required, of the funds and
property of said bank, and as is specially directed in and by the
fourteenth section of the act, entitled 'An act to incorporate the
Bank of Washington and Warren,' and when the last returns were
made to the said public officer, in pursuance of the said law.

By order,
F. SEGER, *Clerk.*"

RESPECTFULLY REPORTS:

That it is found upon an examination of the files of his office, that
the first statement made by the bank of Washington and Warren,
was made on the 1st January, 1820; and from that time to the pre-
sent, the statement required by the fourteenth section of the act in-
corporating the said bank, and by any subsequent acts of the Legis-
lature, so far as the Comptroller has been able to discover, have been

regularly made and filed in this office. These statements have been sworn to by the president and cashier of the bank, and appear to contain the facts required to be given therein, by the said fourteenth section of the act.

The Comptroller has supposed it might be satisfactory to the house, to see the present situation of the funds of this institution, as shown by its last statement, and he has therefore caused a copy of the one bearing date on the first day of January last, and sworn to by the president and cashier, on the twenty-third day of that month, to be made and annexed to this report.

Respectfully submitted,

SILAS WRIGHT, JR.

Dated Albany, 31st March, 1836.

DOCUMENT.

*Report of the state of the funds of the bank of Washington and
Warren, January 1st, 1830.*

4,616 shares, full stock outstanding, at \$50,.....	\$230,800 00
256 shares, on which instalments have been received, to the amount of...	2,725 00
	<hr/> \$233,525 00
Notes in circulation, including those of the original emission, which have never appeared,	70,603 00
Due sundry persons for deposits,	583 87
	<hr/> \$304,711 87
Specie in the vault,	\$4,901 25
Current notes of other banks,	70 00
Banking house and lot, furniture, plates and paper,	8,000 00
Debts due the bank, including bad debts, exclusive of interest,	284,036 88
	<hr/> \$297,008 13

REUBEN O. GIBSON, *President.*
GEO. R. BARKER, *Cashier.*

George R. Barker and Reuben O. Gibson, being by me severally
sworn, say, that the within statement by them subscribed, is true.
Given under my hand and notarial seal, this 23rd day of January,
A. D. 1830.

[L. S.]

ORVILLE CLARK, *Notary Public.*

IN SENATE,

April 2, 1830.

REPORT

Of the Regents of the University, in answer to the
Resolution of the Senate of the 13th March.

To the Honorable the Senate.

The Regents of the University, to whom was referred by the honorable the Senate, the bill, entitled "An act concerning the Literature Fund, the Oswego Canal Fund, and the Erie and Champlain Canal Fund,"

RESPECTFULLY REPORT—

That they have had the subject referred to them, under consideration, and have adopted the following resolution thereon :

Resolved, That the Regents of the University perceive no objection to the proposed exchange of bonds belonging to the Oswego canal fund, for five per cent stock belonging to the literature fund. But the Regents would respectfully suggest, that provision should be made by law for paying to the treasurer of the Regents, out of the general fund, such sum as may be necessary to supply any deficiency in the annual receipts, from the interest on the bonds belonging to the literature fund, to the end, that the Regents may be enabled to include in the amount to be distributed annually among the academies, a sum equal to the interest on the said bonds ; the amount so to be advanced, to be re-imbursed to the general fund, from the income of the literature fund, whenever the same shall be received into the treasury.

Resolved, That the preceding resolution be communicated to the Honorable the Senate, in answer to their resolution of the 13th of March instant.

By order of the Regents.

SIMEON DE WITT, *Chancellor*.

G. HAWLEY, *Secretary*.

Albany, March 31, 1830.

IN ASSEMBLY,

March 29, 1830.

REPORT

Of the Select Committee, on the petition of the supervisor of the town of Hounsfield.

Mr. Orvis, from the select committee to whom was referred the petition of the supervisor of the town of Hounsfield,

REPORTED :

The petitioner sets forth that the commissioners of highways of said town, in pursuance of a vote of said town at a special town-meeting held for this purpose, borrowed of the poor fund of said town \$636.48, at two several times, and gave their official promissory notes : That said notes are still due, and that the said town has no means of paying them but by taxing the inhabitants to the amount. That the poor fund of said town amounts to \$2,616.98 : that the revenue arising from excise, &c., is usually sufficient to defray the poor expenses of said town : That the said town, at their last annual town-meeting, held on the second day of March instant, passed the following resolution, to wit :

“ Resolved, That the supervisor of the town of Hounsfield be directed to apply to the Legislature, at their present session, for an act authorising the overseers of the poor of said town to give up to the commissioners of highways of said town, which said notes were given by the commissioners of highways of said town for money loaned by them for the benefit of said town, and in pursuance of a vote of the inhabitants thereof.”

The committee have prepared a bill in accordance with the prayer of the petitioner, and ask leave to introduce the same.

No. 373.

IN ASSEMBLY,

April 1, 1830.

REPORT

Of the Regents of the University, relative to Hamilton College.

To the honorable the Assembly of the State of New-York.

The Regents of the University, in compliance with a resolution of the honorable the Assembly, of the 15th of January last, requesting from them certain information in relation to Hamilton College, transmit herewith a report recently received by them from the trustees of said college, communicating the information requested by the said resolution.

By order of the Regents,

SIMEON DE WITT,
Chancellor.

G. HAWLEY, *Secretary.*

Albany, April 1st, 1830.

[No. 373.]

1

REPORT, &c.

The trustees of Hamilton College acknowledge the receipt of a communication from the Regents of the University of the state of New-York, with a copy of a resolution of the honorable Assembly, requesting a detailed statement of the affairs of the institution, shewing, among other things, the grounds of the difficulties under which it has been suffering; the number of students therein during the past year; the number of graduates at the last commencement; the salaries paid to each of the officers of the college during the last year, and its general prospects.

The trustees, without reference to the right of the Regents or the Legislature to make this call upon them, most cheerfully proceed to the task of answering the resolution.

The statements of the treasurer, herewith transmitted, will give a general view of the financial condition of the college; and if more particular information is desired it will not be withheld.

As to the grounds of the difficulties in relation to the institution, the trustees think it not discreet to attempt an enumeration of them all; but among the most prominent the trustees would mention the fact, that the office of professor of mathematics and natural philosophy was vacant from November, 1827, to May, 1829; and that the office of professor of languages was vacant from May, 1828, to August, 1829.

In consequence of these vacancies, many of the students then in college left and resorted to other institutions. Others who would probably have joined the college, were prevented from entering. An unfortunate difference of opinion among the trustees, as to the most advantageous method of conducting the affairs of the college, and between a part of the board of trustees and the faculty of the college, had probably a tendency further to check the prosperity of the institution.

The trustees further report, that so far as respects the number of students and graduates the last year; the present number of students; the officers of the college and salaries; the amount of the funds of the college; the number and condition of the buildings; they refer to their annual report made in February last.

The salaries paid to the officers of the college during the year ending in August last were: to the president, \$1,800: to one tutor, \$400; to one assistant, during the two first terms of the year, \$165; and to a professor of mathematics and natural philosophy, from May last, at the rate of \$800 per annum; these gentlemen being the only officers of college receiving compensation for their services during the last year.

The trustees have the satisfaction further to report, that since August last the officers appointed as professors of mathematics and natural philosophy; of the languages; and also of chemistry, have

been, and are now, severally engaged in the active discharge of their official duties; and that the institution appears to be rapidly rising from the depressed state into which it had fallen.

From the low state of its funds, however, the trustees do not feel themselves warranted in employing the number of professors they might otherwise think desirable; yet they think that the great experience of President Davis, his high reputation as an instructor, assisted as he is by the other able men associated with him in the faculty, warrant them in the belief that the institution cannot fail of affording opportunities for acquiring a classical education highly advantageous to the student and satisfactory to the public. And that notwithstanding the cloud that has lately obscured its prospects, it cannot fail, under the fostering care of its present officers, to obtain the confidence of the community, and a high rank among the literary institutions of our country.

By order of the board of trustees,

A. S. NORTON,
Chairman, *pro tem.*

(Copy,)

O. WILLIAMS, *Secretary.*
Clinton, March 17th, 1830.

A statement, showing the amount of funds subscribed for the endowment of Hamilton College, May 12th, 1812, and the manner in which the same were to be paid; also the amount of donations from individuals subsequent to that period, so far as the same can be ascertained.

Amount of inventory, as presented to the Regents,...	\$52,844 64	
Add for error in Jer. Van Rensselaer's sub-		
scription,.....	\$200 00	
And deduct from D. Barton, (overcharged,)	40 00	
	<u>\$160 00</u>	
		<u>160 00</u>
Total amount,.....	<u>\$53,004 64</u>	

The above subscriptions were payable as follows, viz:

In property, real and personal, of Hamilton O. Academy,	\$15,000 00	
In other real estate, as valued by donors,	15,104 50	
In books and stationary,	205 00	
In turnpike and bridge stock,	587 69	
In cash,.....	<u>22,107 45</u>	
		<u>\$53,004 64</u>

Of the above subscriptions, the amount paid, or secured to be paid, by bond or note, is as follows :

Lands, &c. of Hamilton Oneida Academy,	\$15,000 00	
In other real estate conveyed,	13,294 50	
In books, &c.	205 00	
In turnpike and bridge stock,	217 69	
In cash, secured by bond or note of donors,	20,421 25	
		<u>\$49,138 44</u>

And there are due on the original subscriptions the following sums, viz :

In stock not transferred,	\$370 00	
In lands not conveyed,	1,720 00	
In cash, not secured in any way,	1,776 20	
		<u>3,866 20</u>
		<u>\$53,004 64</u>

In making the above estimate, I have not taken into account the following property which belonged to Hamilton Oneida Academy, and which was transferred to the trustees of the college, viz :

Personal property, estimated at	\$500 00	
The Soden lot, so called,	463 00	
Lot No. 45, in Sangerfield,	400 00	
		<u>\$1,363 00</u>

I have omitted to include this property under the belief that it was embraced in the subscription of \$15,000, although it stands on the books as an additional donation over and above that sum.

As the subscriptions that have not been paid, or secured by bond or note, are of no value, the amount of funds received from individual donations at the time the charter was obtained, must be estimated at	\$49,138 44	
To this add donation of Col. Lincklaen,	\$200 00	
do do Dan'l. Kellogg, ...	100 00	
		<u>300 00</u>

Making in all, from individual donations,

\$49,438 44

In addition to this, there have been a number of shares in the boarding-house (now president's house,) released to the trustees at different times; but I have no means of ascertaining their value. I am also inclined to think that several other subscriptions, made before the charter was granted, have been paid, but have not, at present, the means of ascertaining with certainty.

A Statement, showing the amount of funds received by the Trustees of Hamilton College from the State, under the several acts of the Legislature making appropriations for the endowment and relief of the same; and the times at which the same were received; also the sum total of state and private donations, and the amount of the same now remaining unexpended.

June 19th, 1812, received, in state mortgages, principal and interest, \$50,000 00

By an act, passed 1813, the trustees were authorised to subscribe at par in certain banks for \$90,000 in stock. This right was sold July 16th, 1813, for .. 14,000 00

By an act, passed 1814, the sum of 40,000 and interest not exceeding six years, was directed to be raised by lottery for the benefit of Hamilton college. From this appropriation the following sums were received, viz :

March 18th, 1817, from state Treasurer, (special act,) \$10,000 00

July 3d, 1819, " " 2,100 00

Jan. 28th, 1820, " " 3,950 00

March 8th, 1821, " " 1,915 70

Aug. 4th, 1821, " " 2,460 58

Aug. 9th, 1822, " " 807 00

Amount received from state on account of lottery, \$21,233 28

November 9th, 1822, sold residue of right to the lottery to trustees of Union college, for..... 33,354 00
(Interest from April 9th, 1822.)

Total from lotteries, 54,587 28

Amount received from appropriations by the state,... 118,587 28

Add amount of private donations,..... 49,438 44

Whole amount of donations, \$168,025 72

Of the foregoing donations there remain unexpended, including interest due thereon, the following sums, viz :

Amount of principal and interest on state mortgages,..... \$10,310 53

Amount of lands bid in for trustees on mortgage sales,..... 1,216 96

Amount due on bonds taken in exchange for mortgages,..... 2,619 39

Balance on hand from state mortgages, \$14,146 88

Lands given by donors, as valued by themselves, 10,794 00

Carried forward, \$

Brought forward, \$	
Amount due on bonds and notes of donors,	4,205 13
Hamilton Oneida Academy property, ..	15,000 00
	<hr/>
	\$29,999 13
<hr/>	
Amount of donations and interest thereon unexpended,	44,146 01
This deducted from sum total of donations received,	168,025 72
	<hr/>
Gives amount of capital expended over and above interest accruing thereon,	\$123,879 71
	<hr/>

In arriving at the above result, no deduction has been made from the estimated value of the donation from Hamilton Oneida Academy, a large part of which consisted in the academy building, which has become of little or no value. Nor has any account been made of the debts due from the trustees of the college towards buildings and other expenses, and which amounted in January, 1829, the time to which the accounts are brought down, to \$9,704 42.

**A STHamilton College during each
year which the same was receiv-
ed**

	Subscriptions to Bank and Lottery.	Land sold.	Total.
From	5,000 00	\$74 00	\$16,767 97
	9,489 31	.....	22,135 99
	.....	.....	14,113 31
	Lottery.	.....	8,593 47
	0,000 00	91 22	17,710 56
	.....	.....	6,483 79
	2,100 00	150 56	7,627 20
	3,950 00	159 00	9,740 97
	4,362 25	155 00	9,677 21
	0,807 00	82 00	16,625 72
	5,059 87	70 50	29,568 87
	.....	103 00	3,719 67
	385 00	52 00	5,123 43
	.....	186 00	6,049 54
	.....	433 23	8,772 34
	.....	709 35	7,491 56
	1,153 43	\$2,114 29	\$190,269 44
	.....	.....	\$2,639 75
	.....	.....	\$192,909 19

[N



A College during each year, commencing the sum total for each object.

	Salaries.	Miscellaneous expenses.	Orders of Prudential Committee.	C. Alexander.
4 70	\$4,641 24	\$575 15	\$2,012 90	\$2,263 03
Fr 00	4,081 65	1,110 14	1,165 74	1,280 00
....	4,230 02	1,611 80	272 96	1,210 00
....	3,997 98	1,738 39	100 01	.....
....	4,544 87	4,998 71	177 96	1,200 00
2 80	4,506 08	1,721 75	361 58	.....
....	4,425 77	1,480 59	399 85	1,217 68
8 78	5,036 00	2,063 78	673 84	.....
....	6,451 51	1,486 65	434 61	.....
2 00	4,250 48	833 22	526 03	.....
0 00	4,074 21	1,083 84	557 68	.....
8 19	4,805 17	917 11	532 41	.....
8 00	3,749 05	677 24	441 89	.....
8 61	3,886 26	599 46	489 40	.....
....	3,906 30	457 70	359 67	.....
....	3,072 30	584 77	559 54	.....
3 08	\$69,658 89	\$21,940 30	\$9,066 05	\$7,170 71

.....	\$191,843 82
.....	192,909 19
.....	<u>\$1,065 37</u>

From the foregoing statement, it appears that there has been paid for erecting buildings,	\$70,639 02	
And for levelling, fencing, &c. college grounds,	2,834 28	
There is still due for these objects,.....	3,200 00	
		<hr/>
Making whole cost of buildings, &c. exclusive of repairs,.....		\$76,673 28
Paid for lands purchased adjoining the college,	1,248 09	
		<hr/>
Paid for chemical apparatus, &c.,.....	900 00	1,248 09
do philosophical apparatus,	2,203 50	
		<hr/>
Whole amount paid for apparatus,.....		3,103 50
Cash paid for library,	3,093 08	
Subscriptions paid in books,.....	215 00	
		<hr/>
Whole cost of library, (private donations excepted,).		3,308 08
		<hr/>
Total amount invested in buildings, library, &c.,.....		\$84,332 95
		<hr/>

Under the head of "*miscellaneous expenses*," the following items are included. They embrace the principal part of the charges coming under this head; the remainder, consisting of a great variety of small charges, it is not thought necessary to particularize.

Cash paid for discount on money borrowed at various times,.....	\$2,416 06
" " committee for attending examinations, ...	458 00
" " expenses of meetings of trustees and commencements,*	1,166 97
" " Mrs. Backus, (special appropriation,)....	1,050 00
" " for seal, &c.,.....	138 00
" " premiums for speaking,†	32 00
" " taxes and int'st. due the state on wild lands,	509 55
" " collecting funds,.....	54 96
" " E. Clark, treas., for salary & extra services	3,449 90
" " do do expenses, &c.,.....	332 22
" " J. Dean, treasurer, salary,.....	616 16
" " for bell,.....	164 00
" " for binding books and account books, ...	223 06
" " for carpet,.....	81 59
" " expenses of agent sent to Hanover,.....	58 22
" " do do New-York,	50 00

Carried forward,

* The expenses of commencement and the meetings of board of trustees, have of late years been paid by the treasurer, on the orders of the prudential committee. This item does not therefore embrace all these expenses.

† Premiums for speaking, have been principally furnished on the orders of the prudential committee.

	Brought forward,.....	\$	
Cash paid	for making side walks,		\$50 00
" "	expenses of President Backus' funeral and monument,		324 13
" "	do do professor Norton,		217 32
" "	for wood purchased,		145 63
" "	for preaching in chapel,*		165 00
" "	for printing,		202 00
" "	clerks salary, \$40 per annum,		587 80
" "	for repairs to president's house, &c.,		158 77
" "	Clark and King, for costs,		732 07
" "	repairs to buildings at various times,		276 45
" "	paid steward for services and use of boarding house,		5,957 08
			<hr/>
			\$19,616 93
			<hr/>

A statement, shewing the amount of real and personal estate, belonging to the trustees of Hamilton College, (exclusive of the college buildings, the houses, lands and improvements adjoining to the college and the library, apparatus, and other personal property for the use of the same,) designating the actual value of the said real and personal estate, as it existed on the 1st day of May, 1829, according to the best information obtained, in regard to its value.

Lands conveyed by donors, originally valued at,	\$10,794 00	
Deduct the excess above their supposed present worth,	5,000 00	
	<hr/>	
Supposed present value,	5,794 00	
Lands bid in for trustees, on mortgaged sales, present worth,	1,216 76	
Present worth of lands,		\$7,010 76
Principal and interest due on state mortgages,	10,310 53	
Do. on notes and obligations for lands sold, money loaned, &c.,	4,119 88	
Do. on leases, including the value of the lots leased,	1,383 82	
	<hr/>	
		15,814 23
Due on subscriptions, bonds and notes,	4,205 13	
Do. on notes given for tuition, room rent, &c.,	4,219 99	
Do. on accounts for do. do.	10,565 78	
	<hr/>	
Carried forward,	\$	

* Preaching in the chapel, has been generally paid for on the orders of the prudential committee.

Brought forward,.....	\$	
Total amo't. due for the three last items,		18,990 90
Deduct for bad debts on these items,..		6,847 63
		<hr/>
Balance supposed to be good,.....		12,143 27
Actual value of real and personal estate, above mentioned,.....		34,968 26
Deduct amount of debts due from the trustees,		9,704 82
		<hr/>
Balance of funds remaining after paying all debts, ...	\$25,	263 44
		<hr/>

The last abstract is taken from a very minute report made on the state of the finances, shewing their condition on the 1st day of May, 1829, and is believed to be correct. The preceding abstracts were taken from a like report, believed to be accurate, showing the amount of receipts and expenditures from the first commencement of the institution, to the 17th of January, 1829. Between these two periods, the receipts and disbursements were very trifling, and the abstracts, taken together, exhibit very nearly the true state of the case at the latter period.

Clinton, March 24th, 1830.

[Copy,]

OTHNIEL WILLIAMS,
Treasurer of Hamilton College.

I certify the foregoing to be true copies of original documents on the files of the Regents of the University.

GIDEON HAWLEY,
Secretary of the University.

Albany, April 1st, 1830.

IN ASSEMBLY,

March 30, 1830.

REPORT

Of the Select Committee, on the petition of Holloway Long and others.

Mr. Goodman, from the select committee to whom was referred the petition of Holloway Long and others, praying for the passage of an act granting to Erastus Bailey the privilege of erecting mills and other machinery on the Genesee river,

REPORTED :

That they have had the subject under consideration, and find that the Genesee river, upon which stream it is proposed by the petitioners to grant the privilege of erecting mills, is a public highway. The petitioners do not however ask for any privilege, the enjoyment of which will interfere with the free navigation of said river; on the contrary, they ask for such privilege upon the express condition that the said Erastus Bailey, to whom they request this privilege to be granted, shall not obstruct the navigation of the said river, either for boats, rafts or any other craft, which may at any time navigate the waters of the said stream.

The petitioners are of the opinion, and from the best information which your committee have been able to obtain, they concur in the opinion, that mills may be erected at the place proposed by the petitioners, which will be valuable to the inhabitants of the adjacent country, and, at the same time, not interfere with the free navigation

of the river, or encroach upon the public interest or private rights of other persons; and your committee are of the opinion that the prayer of the petitioners should be granted, and have instructed their chairman to ask leave to introduce a bill for that purpose.

IN ASSEMBLY,

April 2, 1830.

REPORT

Of the Standing Committee on Privileges and Elections, on the petition of John Beebe and others,

Mr. Davis, from the standing committee on privileges and elections, to whom was referred the petition of John Beebe and others, praying that the seat of the Hon. Norman Fox, a member of Assembly, duly returned from the county of Warren, might be vacated, upon the ground that he was a minister of the gospel,

REPORTS—

That by the 4th section of the 7th article of the constitution of this state, “no minister of the gospel, or priest of any denomination whatever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office or place within this state.”

Two questions present themselves to the consideration of your committee.

1st. Who are ministers of the gospel or priests, within the true intent or meaning of this provision of the constitution?

By minister is meant, in the opinion of your committee, the pastor of a church, duly authorised or licensed according to the forms and rules of each respective denomination of christians, to preach the unsearchable riches of Christ, to administer the sacrament and ordinances of such church, and to perform all the duties appertaining to the sacerdotal character.

Among pagans, priests were persons whose appropriate business was to offer sacrifices and perform other sacred rites of religion.

In primitive ages, the fathers of families, princes and kings were *priests*.

In the days of Moses the office of priest was restricted to the tribes of Levi ; and the priesthood consisted of three orders—the high priest, the priests and the Levites ; and the office was made hereditary in the family of Aaron.

In the modern church it means a person set apart or consecrated to the ministry of the gospel ; one in orders, or licensed to preach the gospel.

In its most general sense it includes archbishops, bishops, patriarchs and all subordinate orders of clergy, duly approved and licensed.

In Great Britain it is understood to denote subordinate orders of the clergy, above deacons and below bishops.

In this country it denotes any licensed minister of the gospel ; and in the opinion of your committee, is synonymous with minister.

By the preamble to the aforesaid clause in the constitution it is evident, that it was intended to embrace those men only who had separated themselves from the world, and by their profession had become dedicated to the service of God and the cure of souls ; functions of a high and holy character, and incompatible with the discharge of civil or military employments.

To secure these men in their appropriate sphere of usefulness, the constitution wisely took from them every temptation of a worldly nature, that might impair that usefulness or divert them from the great duties of that sacred trust.

2dly. Does the evidence in this case show Mr. Fox to be such minister or priest?

In the opinion of your committee it does not ; and although there were prima facie some facts inducing a belief in the petitioners, that

Mr. Fox was a minister ; yet upon a full examination of the subject, the committee are satisfied the facts do not warrant them in coming to such a conclusion.

But to enable the house the better to review this conclusion of your committee, they beg leave to present in detail the evidence produced and taken by them, and which follows, to wit :

1st. *Oliver Arnold* sworn, said he had known Mr. Fox for some time ; that Mr. Fox had long been a deacon in the Baptist church in the town of Chester ; about one year last February, the settled preacher of that society, Mr. Faxon, died ; and since his death the church has been destitute of a minister. Mr. Fox during that period has taken the lead of their meetings ; read sermons written by others ; took passages from scripture, at other times whole chapters, and explained them ; opened and closed the meetings by prayer, and usually gave the benediction ; at one time went into the pulpit and delivered a religious discourse.

Witness heard the first discourse of Mr. Fox after the death of Mr. Faxon. It was generally called his first sermon : this was about September last.

2d. *Elder Thomas Ravlin* sworn, says he is an ordained minister of the Baptist church ; there is no rule of this church prohibiting any member of their church pronouncing the benediction. Any deacon has a right to read a chapter or verse and explain it, or read sermons of others. It is the duty of a deacon of their church, in case of death, sickness or absence of their pastor, to take the lead of their meetings.

A licentiate is one who thinks himself called to preach, and who is licensed by a vote of a particular church to preach upon trial. If upon trial, the church are satisfied, they call him to an ordination ; without an ordination have no power to administer the ordinances of the church.

At the Scroon Association, last September, witness was appointed to preach the introductory sermon at the next association, and being under the impression that Mr. Fox was licensed by the church at Chester, he nominated Mr. Fox to supply his place in case of his failure ; Mr. Fox at the time objected to such appointment, as improper, and witness presumes that Mr. Fox appears as licentiate on the

minutes of that association, by the act of the clerk, and because he had been thus nominated by witness.

Had thought it the duty of Brother Fox to preach, and once called on him to induce him to preach; but Mr. Fox said he did not think it his duty, as long as his business was as it then was.

Sd. *Samuel C. Dickinson* sworn, said last winter the clergyman at Chester died, and by the rules of the Baptist church, of which witness is a member, in case of the death, absence or sickness of their pastor, the lead of their meetings devolve upon the officers of the church.

Mr. Fox, at the time of the death of their clergyman, was a deacon, and the lead devolved upon him.

It is the practice of those who take the lead, and who are not ministers, after prayer and singing, to read a chapter, make remarks upon the whole or some portion of it, or to read sermons of others; Mr. Fox so proceeded. The church, discovering that his gifts were profitable, and more so when he took a particular subject and confined himself to a few verses or a single verse, took the subject into consideration at a church meeting, and this before the Scroon association, and in August last, witness thinks. The church resolved to request Mr. Fox to come before the church in two weeks from that day, to take a particular subject as the foundation of his remarks. Mr. Fox complied, took a subject, spoke from it. The church again took the subject into consideration, and passed a resolution that his gifts were profitable, and appointed a committee to wait upon him and inquire whether he would accept a license to preach. The committee reported that he declined, as his commercial business would not permit, but wished the church not to be in so great a haste about it.

Mr. Fox never did receive any license. Once understood from Deacon Fox that he was going up to Scroon, a town adjoining Chester, for the improvement of his gifts. At that time there was a reformation at Scroon. Mr. Fox never received any pay from the church; nor was he understood by the church as their minister.

The meetings this winter, in the absence of Mr. Fox, are kept up in the same manner as when Mr. Fox was there, by Deacon Smith, a Presbyterian.

4th. *Elder William Grant* sworn, says he is a Baptist clergyman ; was present at the association at Scroon ; Mr. Fox was nominated to preach the sermon at the next association in case of the absence of Elder Ravlin. Mr. Fox objected, stating that he was not the proper person ; gave no reasons ; vote was taken and carried.

Witness left in November last, several copies of the printed minutes of the association at Deacon Fox's house ; nothing in their church prohibiting any member of their church from pronouncing the benediction never knew any but a regular minister or licentiate pronounce the benediction.

5th. *Levi Mead, jr.* sworn, proved the following to be a true extract from the Baptist church records of Chester, of which witness is clerk, to wit :

"June and July, 1829.

"Voted, that we believe Brother Fox has a profitable gift for improvement in meeting, and that he be requested to improve in the church a fortnight from to-morrow."

"October, 1829.

"Voted, that a committee be appointed to notify Deacon Fox that the church will give him a license to preach, should he think it his duty to accept ; and that Deacon Mead be the committee.

"Deacon Mead, from the committee appointed to see Brother Fox, reported, that he had seen him, and that Brother Fox had stated to him that his mercantile concerns and pecuniary affairs were such that he thought it inconsistent for him to accept a license to preach, as his business and calling was of a different nature ; he therefore declined."

By the minutes of the association at Scroon, marked A, and hereto annexed, of which Mr. Fox was moderator, it appears Mr. Fox is noted a licentiate ; but that has been explained by the testimony of Elder Ravlin, before detailed.

Horace Hall, of the town of Scroon, deposeth and saith, that he is a member of the Baptist church in said town, and that he holds the office of deacon in said church ; that they have no settled minister to administer ordinances to them ; that this deponent is in the

habit of holding meetings regularly on every Sabbath when they have no clergyman ; and that the manner of conducting such meetings is, by reading a chapter and explaining from the whole or a part, or a verse, and giving exhortations from the same ; that within the boundaries of said church, a powerful revival has been experienced within the last six months, so that deacons and lay members have taken parts publicly in carrying on meetings ; that last fall two deacons of the Baptist church in Chester, Mr. Fox and Mr. Collier, came to this place, and in consequence of having no clergyman present, Deacon Fox was requested to conduct the meeting in the day time, and the other deacons and members conducted the meeting in the evening ; that there are nine churches in this association, and but three clergymen, viz : Elder Grant, Elder Ravlin and Elder Scofield ; and that the deacons of the destitute churches are, according to their duty, in the habit of holding meetings, but that they are not, from that circumstance, priests or ministers according to the constitution and discipline of the Baptist order, and further this deponent saith not.

HORACE HALL.

Subscribed and sworn this 27th day of January, 1830, before me,

WALCOTT TYRREL,

Judge of the Court of Common Pleas of Essex county.

Nathan Crandal, of the town of Caldwell, deposeseth and saith, that he is a member of the Baptist church in the town where he resides, and that the said church is destitute of a settled minister to break bread and administer ordinances to them ; and that according to the rules and discipline of the denomination, it is the duty of the church to keep up stated meetings ; and that such meetings are to be conducted by the deacons of said churches ; that this deponent, therefore, as such officer, is regularly in the habit of taking the lead of meetings in the absence of a minister ; (which they have no settled one,) and that the manner of conducting them is, by reading a chapter and explaining and exhorting from the whole chapter or from a particular verse in the chapter ; and that this deponent, in the absence of clergymen, has conducted religious exercises on funeral occasions ; that the Lake George association consists of nine churches, and but three ministers are settled in the association, viz : Elder Ravlin, of Minerva, Elder Grant, of Bolton, and Elder Scofield, of Seroon ; that in consequence of such a destitution, deacons of destitute churches and lay members have been under the necessity of appearing more publicly than they would have done had each church

have had a settled minister to take the charge of them ; but that officers of churches conducting meetings under such circumstances are not ministers, or preachers, or priests, according to the rules and discipline of the Baptist order, and further this deponent saith not.

NATHAN CRANDAL.

Subscribed and sworn this 27th day of January, 1830, before me.

HOBBY MEAD,

Justice of the Peace.

Levi Mead, of the town of Chester, in the county of Warren, being duly sworn, deposeth and saith, that he is a member of the Baptist church, in said town, and has been for many years ; that the rules and discipline of the Baptist denomination, require, that churches assemble at their respective places of worship, keep up meetings regularly, and that in the case where a church has no settled minister, it is the duty of the deacons to hold meetings statedly ; that since the death of elder Henry Faxon, who was the settled minister over this church, *Mr. Fox* and *Mr. Collar*, who *have been* and *who now are* the acting and *only deacons* in said church, have been in the habit of discharging their duty as such officers in the church, and that the lead of the meetings has generally devolved on deacon Fox, as deacon Collar has been some time out of health ; that Mr. Fox had conducted meetings in the absence of a minister, by reading a chapter, and expounding and exhorting from the same, and sometimes from a particular verse or part of said chapter, and frequently since elder Faxon's death, by reading Proudfit and Mason's sermons, and others ; that the church have been trying, since the death of their minister, to procure another, and that they have encouragement of obtaining elder Stearns of Fort-Ann, to come and be their minister ; that the church did last fall or summer, solicit deacon Fox to take a license, voted that they thought his qualifications sufficient, and appointed this deponent a committee to see him and converse with him on the subject, which this deponent says he did, and that Mr. Fox declined accepting a commission or license from the church, but manifested a willingness to do his duty as one of the acting deacons, until the church should be able to procure and settle a minister with them ; that this deponent has long been a member of the Baptist order, and formerly a deacon ; that he is well acquainted with the rules and discipline and government of the Baptist churches, and that deacon Fox, according to such rules and discipline, is not a minister of the gospel, neither is he considered one by the church ;

that this deponent alleges, that he is seventy-seven years of age, and is therefore illy able to bear the fatigues of a journey to the city of Albany—and further this deponent saith not.

LEVI MEAD.

Subscribed and sworn, this 27th January, 1830, before me,
HOBBY MEAD,
Justice Peace.

Your committee have thus presented all the facts ; with their own views as to what is the true construction of this constitutional provision.

In doing this, they have prescribed no rule by which ministers or priests are to be created, leaving each of the various denominations of christians to adopt their own regulations ; but confining this constitutional official disfranchisement, to those only who by each particular society, are denominated ministers or priests, or who by the canons of each church, are so constituted or acknowledged.

Any different construction would leave this question, in the opinion of your committee, undefined, and incapable of any fixed and certain rule.

The committee have therefore directed their chairman to offer the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted, and that they have leave to withdraw their petition.

IN ASSEMBLY,

April 2, 1830.

COMMUNICATION

From the Secretary of State, in regard to the inequality of the new ratio for apportioning School Monies, and the insufficiency of the provision relative to Appeals.

The Secretary of State would respectfully call the attention of the Legislature, to two alterations which were made in the common school system by the Revised Statutes, and which, in his opinion, have an unfavorable tendency.

The first relates to the apportionment of the school money. By the old law, it was made the duty of the Superintendent to apportion the money among the several towns and cities of the state, in the ratio of the population, as often as the same was ascertained by a census of this state, or of the United States. The school money is now distributed in this state, according to the census of 1825; and as soon as the United States census, now about to be taken, is completed, a new apportionment will be made: and it is with reference to this apportionment, that a change of the law may be necessary at this session.

By the Revised Statute, in relation to common schools, (Sec. 3.) the money is to be apportioned to the counties of New-York and Albany according to the ratio of their *population*, as compared with the population of the whole state. And by Sec. 4, "To every other county, city and town, the apportionment shall be made in the ratio of the *number of children* in each over five and under sixteen years of age, as appearing to the Superintendent from the returns for the last preceding year."

This latter section, whatever its practical effect may be, is based upon inequitable principles, and is as erroneous in principle, as it would be to have one standard of weights and measures for Albany and New-York, and a different standard for all the rest of the state. Even-handed justice requires that the school money should be apportioned to all the towns and cities by the same common standard. When the alteration was made, it was supposed by some who were in favor of it, that the new ratio would give an increase to the country counties and towns. If such would be the effect, this is a conclusive objection to the mode of apportionment, as it would be manifestly unjust: But it is susceptible of the clearest demonstration, that the very reverse of this anticipation will be realized; occasioned principally by the defects in the returns of the annual census of the children between five and sixteen. It will be seen by the last annual report of the Superintendent, that although reports have been received from the commissioners of every town in the state, yet there are more than *five hundred districts* from which no returns were made to the commissioners. These delinquent districts are those which were recently organized, or which, from some cause, had not been able to comply with the law, so as to be entitled to money, and therefore had no interest in making returns. A statement is annexed to this report, marked A, which exhibits the number of districts in each county which have omitted to make returns, and also the total number in each senate district; from which it will be seen, that an apportionment upon the number of children between five and sixteen, would operate unequally between the several counties and towns, after excluding the counties of New-York and Albany. Take for example Allegany county, with twenty-two districts not returned, and suppose that these districts average only twenty children each, and that the apportionment is twenty cents to each child, it would show a loss in that county of eighty-eight dollars in the apportionment for each year; contrast this with Columbia county, where all the organized districts, save *two*, have made returns, and it will show that by this mode of apportionment, Columbia would lose only forty dollars in five years, while Allegany county would lose 440 dollars in the same period.

Again, Delaware, with twenty-seven districts not returned, upon the same principle, would lose 540 dollars in five years, and Rensselaer only sixty dollars in the same time.

In the first senate district, only twenty school districts have omitted to make returns, whereas in the fourth district, there are 106

delinquent school districts, and in the eighth, 164 have made no returns. By examining the annual report of the Superintendent, it will be found, that in the new towns where the inhabitants are generally most in want of the aid of the school money, the returns of the districts are necessarily the most imperfect : and the burthen of this inequitable apportionment would fall upon those who are the least able to bear it.

It is worthy of particular notice, that these examples have been selected from those counties among which the money is to be apportioned upon the same principle, viz : according to the ratio of the children between five and sixteen. But if the comparison could be made by estimating the whole number of souls in Albany county, compared with the census of the children in St. Lawrence county, where *thirty-four* districts are not returned, the disparity would be much greater in favor of Albany ; and the injustice of the new ratio would be rendered much more apparent.

The second alteration has reference to the statute relating to appeals. Section 110 authorises any person conceiving himself aggrieved by any act done by a district meeting, or the trustees of a district, to "*appeal to the commissioners of common schools of the town.*"

There are in the state two thousand nine hundred and thirty-five parts of districts. The districts formed from these parts mostly belong to two towns : many are formed from three, and a few from four towns. These double districts are formed by the concurrence of a major part of the commissioners of each town to which they belong ; and all questions in relation to them are submitted to the same authority.

To whom then shall a person belonging to a district formed from two or more towns, appeal for a redress of his grievances ? The commissioners of "the town" where he happens to reside, have no control over the affairs of his district without the concurrence of the commissioners of the other towns, out of which the district is formed.

In providing a remedy for this omission, it is believed, that the interests of the common schools would be promoted by returning at once to the practice under the old law, and re-enacting it, in all respects, as it was reported to the Legislature by the revisers. If the new mode of appeal is extended to double districts, the person

aggrieved would be compelled to assemble the commissioners of two, or three, and in some cases, four towns, to hear and decide an appeal.

The committee to which the school act was referred, in dividing the cases of appeal, gave those questions which depend mainly upon a construction of the statute, and which should be uniform throughout the state, to the commissioners of towns; and left with the Superintendent an appeal as to the formation and alteration of school districts; questions which depend altogether upon local information; so much so, that one case is rarely a precedent for any other case. If the decisions of the commissioners in forming and altering districts were declared to be final, it would relieve the Superintendent from much trouble, in investigating and determining questions about which he cannot have the necessary local information to decide understandingly between the parties. If these cases had been given to the commissioners for their final decision, the interests of the common schools could not have suffered, and the Superintendent would have been relieved: But the establishment of 744 tribunals to decide the great variety of questions connected with the assessment and collection of taxes, the kind of property to be taxed, &c. &c. has rather increased than diminished his labors. Under the old law, when a question arose as to the assessment of a tax, or any other question, the case could be stated to the Superintendent, and his answer as to the construction of the law would settle the whole question. Now he is inquired of—not only as to the point in controversy, but he is called upon, in many cases, to inform the commissioners what their powers are under the law; in what manner they can get witnesses before them; who shall swear the witnesses, and how the whole proceeding shall be conducted; and, in some cases, the whole testimony has been submitted to the Superintendent, and his advice asked upon the various points.

The appeals to the commissioners, and also to the Superintendent, are allowed only in such cases as are specified in the 110th and 111th sections; and cases are constantly arising under the act, which do not belong to either class. The old law, as well as the section reported by the revisers, contained a general provision for any other case arising under the statute relating to common schools

The opinion of the Superintendent therefore is, that the harmony and success of the common school system will be promoted by adopt-

ing the provisions of the act of 1822, in relation to appeals, as they were reported by the revisers in Sec. 108 of Chap. 15.

A. C. FLAGG,
Superintendent of Common Schools.

DOCUMENT.

(A.)

	No. of Districts.	Districts returned.	Districts not returned.
<i>First Senate District.</i>			
Suffolk,.....	127	121	6
Kings,.....	18	18	.....
Queens,.....	76	62	14
Richmond,.....	20	20	.....
New-York,.....	.....	.....	.....
	241	221	20
<i>Second Senate District.</i>			
Westchester,.....	131	131	.....
Dutchess,.....	212	200	12
Delaware,.....	229	202	27
Ulster,.....	146	139	7
Sullivan,.....	71	71	.....
Putnam,.....	67	63	4
Rockland,.....	31	31	.....
Orange,.....	187	176	11
	1,074	1,013	61
<i>Third Senate District.</i>			
Greene,.....	143	132	11
Columbia,.....	176	174	2
Albany,.....	142	140	2
Rensselaer,.....	184	181	3
Schoharie,.....	149	141	8
Schenectady,.....	50	49	1
	844	817	27
<i>Fourth Senate District.</i>			
Montgomery,.....	212	207	5
Saratoga,.....	211	202	9
Washington,.....	248	235	13
Warren,.....	109	83	16
Clinton,.....	86	74	12
Essex,.....	140	125	15
Carried forward,...			

	No. of Districts.	Districts returned.	Districts not returned.
Brought forward,...			
Franklin,	67	65	2
St. Lawrence,	250	216	34
	1,323	1,217	106
<i>Fifth Senate District.</i>			
Herkimer,	187	184	3
Oneida,	335	320	15
Madison,	205	201	4
Oswego,	176	151	25
Lewis,	95	95	.....
Jefferson,	278	247	31
	1,276	1,198	78
<i>Sixth Senate District.</i>			
Otsego,	309	301	8
Chenango,	256	256	.....
Broome,	120	102	18
Cortland,	153	146	7
Tompkins,	185	176	9
Tioga,	164	146	18
Steuben,	223	200	23
	1,410	1,327	83
<i>Seventh Senate District.</i>			
Onondaga,	267	260	7
Cayuga,	240	233	7
Seneca,	98	97	1
Ontario,	214	204	10
Wayne,	170	165	5
Yates,	94	93	1
	1,083	1,052	31
<i>Eighth Senate District.</i>			
Livingston,	151	143	8
Monroe,	208	202	6
Genesee,	292	284	8
Niagara,	105	86	19
Erie,	174	163	11
Allegany,	206	184	22
Cattaraugus,	121	95	26
Chautauque,	231	177	54
Orleans,	112	102	10
	1,600	1,436	164

IN ASSEMBLY,

April 3, 1830.

REPORT

Of the Committee on Counties and Towns, on the petition of sundry inhabitants of the counties of Ontario and Seneca, praying for the erection of a new county.

Mr. Noble, from the committee on the erection and division of towns and counties,

RESPECTFULLY REPORTS :

That they have had under consideration the petitions of sundry inhabitants of the counties of Seneca and Ontario, praying for the erection of a new county, to comprise the towns of Seneca and Phelps, in the county of Ontario, and the towns of Fayette, Waterloo, Seneca Falls, Junius and Tyre, in the county of Seneca ; and also the petitions of the inhabitants of the towns of Varick, Romulus, Ovid, Covert and Lodi, in the county of Seneca, praying to be set off as a county by themselves, with the name and records of Seneca county : and they have also had under consideration the remonstrances against the proposed division, and have heard the representations of the advocates and opponents of the measure.

It appears that the present county of Seneca is nearly forty miles in extent from north to south, with an average breadth of about eleven miles ; that there are good and ample court-houses and jails at Ovid and Waterloo ; and that the courts are held alternately at those places, distant from each other about nineteen miles ; that the county of Seneca is divided into two jury districts, which, in the

opinion of the committee, is an inconvenient and improper arrangement, tending to create jealousy and distrust between the people of the different sections, and impair that confidence which should be reposed in the administration of justice, and that it ought, therefore, to be abolished. It appears, also, that there is no regular communication by stage between the large and flourishing villages of Seneca Falls and Waterloo, in the northern jury district, and the village of Ovid, in the southern jury district of that county, for the conveyance of passengers or the transmission of papers or intelligence by mail, excepting by the way of Geneva, and that there is no intercourse or connection of business between the people of these two districts, except that which depends upon the present organization of the county and is required by law.

The petitioners from the towns of Seneca and Phelps, in the county of Ontario, also complain of the great inconvenience and expense to which they are subjected in attending courts at Canandaigua, to which place they rarely ever go, excepting for the discharge of duties required of them by law; their business connexions and intercourse being chiefly at the village of Geneva, the market town of that part of the country. This village, belonging to the first class of commercial towns in the interior of our state, and containing a population of about 4,000 people, is situated at the distance of about sixteen miles from Penn-Yan, Canandaigua and Lyons, the seats of justice of the counties of Yates, Ontario and Wayne respectively, to which places her citizens are constantly drawn from their homes and their business, to attend the courts, and very frequently at great sacrifices.

The petitioners have satisfied the committee that the difficulties and expenses of which they complain have become burthensome and oppressive, and that the granting of the prayer of their petition, will afford them ample relief.

From the representations made to the committee, it appears that some of the citizens in the northwest part of the town of Phelps are opposed to the division of the county of Ontario; yet they have not furnished any reasons for that opposition, by which it would appear that they will not be equally as well accommodated in attending the courts of justice at Geneva and Waterloo as at Canandaigua.

There is also a remonstrance against the division of the county of Seneca, signed by a large number of citizens of Seneca Falls, who offer two reasons against the measure: 1st, that by the contemplated division, as applied for by the people of Geneva, a county boundary will be brought within three miles of their village; whereas it turns out, upon examination, that the distance is at least seven miles to the proposed county line: and secondly, they object, because, as they say, the Legislature has already endowed a college at Geneva. This allegation, appears also, upon investigation, to be incorrect. The Geneva College was endowed by voluntary donations of liberal and enterprising citizens in different parts of the state, and without any aid whatever from the government. And had it been otherwise, and this college had been endowed and cherished by the fostering care of the Legislature, it might still remain a question whether the fact would be a valid reason either for granting or denying the prayer of the petitioners.

The opponents of the measure having thus specified their objections, the advocates of the measure have assumed that they have no others to offer; and as those objections appear to be founded in mistake, they have further assumed, that had the people who signed that remonstrance been correctly informed in the premises, they would have been in favor of the division, especially as it will enable them to give their attendance at one half of their courts at Geneva, eleven miles distant, on the great western mail road, where there is a daily mail and five daily lines of post-coaches both ways for the conveyance of passengers, instead of giving the same attendance at Ovid, a distance of nineteen miles, with which they have no such means of intercourse, except by the way of Geneva, in which case their journey to Ovid would be thirty miles.

The committee have been very strongly impressed with the great importance of the proposed division to the citizens of Geneva and its neighborhood, from the fact, that they offer to furnish an ample building for the accommodation of the courts and juries at that place at their own expense, and without any resort to taxation for that purpose; and their intention and ability to do so has not been questioned by the opponents of the measure.

The opponents of this measure have suggested to the committee that the 7th section of the 1st article of the constitution, which provides for the apportionment of members of the Assembly, contains

a prohibition against assigning any representation to a new county until after the return of the next enumeration, and have referred the committee to the report of the standing committee on the erection and division of towns and counties of 1828, (Assembly journals, page 1189,) in support of that position. But the committee have not found in that report, nor in the constitution, any thing to justify the construction urged upon them; nor can they reject the belief, that if the framers of that instrument had intended to insert in it so important a provision, they would have done it in language as open and specific as they have used in all other cases of limitation and prohibition, instead of leaving it to be sought out by construction.

The committee have diligently examined the subject in all its bearings, and they entertain the opinion that the formation of a new county, as proposed by the petitioners, would very greatly promote the interests and convenience of the people within its borders, and would not produce any serious injury to their neighbors.

For the reasons as above stated, your committee have come to the conclusion that the prayer of the petitioners is reasonable and ought to be granted. They have therefore prepared a bill for that purpose, and directed their chairman to ask leave to introduce the same.

IN ASSEMBLY,

March 31, 1830.

REPORT

Of the Select Committee, on the petition and remonstrance of sundry inhabitants of the county of Jefferson, relative to removing obstructions in Perch river.

Mr. Orvis, from the select committee to whom was referred the petition, and also the remonstrance of sundry inhabitants of the county of Jefferson, relative to removing obstructions in Perch river,

REPORTED :

It is represented that in the town of Pamela in said county, is situated a body of water called Perch lake, of considerable extent, which is partly surrounded by a tract of low marshy ground, and from this lake issues a stream called Perch river, which runs through the towns of Orleans and Brownville, and empties into the Black river bay. The current of this river is retarded and rendered sluggish from its source to the distance of about ten miles, by means of obstructions of lime rock situated at the above distance of ten miles from its source, and also by its crookedness, and these have caused depositions of earth, vegetable matter, &c. and a continued increase of obstruction. In consequence of this, there are nearly two thousand acres of land around Perch lake, and bordering on the stream, which remain an entire marsh ; and the whole tract forming the valley of the stream for the aforesaid distance of ten miles, consisting of about two thousand acres, is much less valuable than it would be if the current of the river could be rendered more rapid by the removal of the obstructions, which might be done at an expense not exceeding one thousand dollars.

This, it is thought, would increase the value of six to eight thousand acres of land one dollar per acre, and reclaim two thousand acres of marsh, which is now worthless.

These marshes and grounds have rendered the surrounding country very unhealthy for several years past; and indeed such has been the severity and fatality of diseases produced by marsh effluvia, that many people have deserted their farms, and removed from the country.

A great portion of the land to be benefitted, is not surpassed in quality by any land in the county, and the numerous inhabitants in the immediate vicinity of the lake and river, would probably be relieved by the contemplated improvement from the scourge that has so sorely afflicted them for several years past.

It is further represented, that a mill dam, which had become a nuisance, has been removed, upon an indictment and trial before judge Cowen, at a special oyer and terminer in the month of March 1829; which dam was situated just below the place where the principal obstructions in the river now exist. In the prosecution of this indictment, expense was necessarily incurred in making necessary surveys, and taking the level of the stream by a competent engineer, &c. to the amount of about four hundred dollars, which was paid by five or six persons, and for which they have received no remuneration. These same persons have also, since the removal of the dam, been engaged in deepening the channel, in pursuance of the act herein after mentioned, at one place where it is obstructed by rocks, at an expense of about three hundred dollars, for which also they are unpaid.

An act was passed in 1827, appointing commissioners to remove the obstructions in Perch river above Gillingham's mill dam, (which was the one removed,) but no provision was made for defraying the expenses of removing the obstructions, but by voluntary contributions, and consequently it has been found impossible to finish or make much progress in the work.

The petitioners pray for a law authorising the clearing, deepening and improving the channel and bed of said river, and the levying and collection of a tax sufficient not only to defray the expenses thereof, but to reimburse and defray the aforesaid expenses already incurred by the persons above mentioned, not exceeding one thou-

and five hundred dollars, to be assessed upon the lands on said river and lake, to the width of one mile upon each side.

Appended to the petition is a certificate of the county clerk, that the petitioners comprise all the principal owners of the land to be effected by the tax.

Your committee are of opinion that the prayer of the petitioners is reasonable and ought to be granted, and ask leave to introduce a bill accordingly.

IN ASSEMBLY,

April 3, 1830.

REPORT

Of the Comptroller, in obedience to a resolution of
the Hon. the Assembly of the 1st of April.

STATE OF NEW-YORK, }
COMPTROLLER'S OFFICE. }

The Comptroller, in obedience to the following resolution of the
honorable the Assembly, to wit :

"STATE OF NEW-YORK, }
In Assembly, April 1, 1830. }

Resolved, That the Comptroller be requested to report to this
house the amount paid, and to what persons, as assistant counsel
fees, under the act of the 8th of April, 1826, entitled "An act more
effectually to provide for defending the titles of certain persons to
lands in the counties of Putnam and Dutchess, derived from the
people of this state, against any claim set up by or under the chil-
dren of Roger Morris and Mary his wife, deceased," and further,
what allowance has been made to the Attorney-General, for extra
services and expenses under the said act, in the several suits here-
tofore decided, or now pending, between John Jacob Astor and this
state, and whether, in his opinion, it be expedient further to conti-
nue in operation the said act.

By order,

F. SEGER, *Clerk.*"

RESPECTFULLY REPORTS :

That the payments which have been hitherto made out of the trea-
sury, upon the certificate of the Governor, pursuant to the second
[No. 380.]

section of the act, entitled "An act more effectually to provide for defending the titles of certain persons in the counties of Putnam and Dutchess, derived from the people of this state, against any claim set up by or under the children of Roger Morris and Mary his wife, deceased," passed April 8th, 1826, may be properly classed under three heads: 1st, payments to assistant counsel; 2d, payments to the Attorney-General, for extra services and expenses; and 3d, payments to witnesses, and for other expenses in the premises.

Annexed to this report, is a detailed statement of the payments which have been made under each head, with the date of each payment, and the name of the person to whom made: From this statement, it will be seen that the payments to assistant counsel have amounted to \$6,700 00

The payments to the Attorney-General, for extra services and expenses, to 2,429 62

And the payments for other expenses in the premises, to 3,949 54

Making the whole amount paid under this law, \$13,079 16

The resolution does not call for the last item of these payments, but the Comptroller has considered it proper to give an entire view of the expenses hitherto incurred under the act. The warrants have not in all cases been drawn directly in favor of the persons to whom all the payments have been made, as it has been necessary in relation to the expenses of witnesses, &c. to make some advances, which have been done through the Attorney-General, and the money for them has been drawn by him. He has, however, in all such cases, and in all cases where assistant counsel have been paid through him, rendered to this office the receipt of such counsel, and of the other persons to whom payments have been made.

The question of the expediency of further continuing the act under which these payments have been made, would seem to the Comptroller entirely to depend upon the conclusion to which the legislature shall come, as to the necessity or expediency of continuing this litigation, according to the provisions of the act of the 16th April, 1827.

That act provides, that five several suits in ejectment shall be tried and submitted to the final decision of the supreme court of the United States. But one suit has as yet been so tried and decided,

and as the Comptroller is informed, the remaining four are commenced, and in a state of forwardness for trial, before the circuit court. The litigation involves an interest to the state, to the value at this time, of more than half a million of dollars, and the claim is one which, if finally successful, is now upon interest against the state. Under these circumstances, it is only in the power of the legislature to change the course of these legal proceedings, and the propriety of doing so is a question proper for the decision of that body only. Upon that decision, in the opinion of the Comptroller, must depend any conclusion as to the expediency of continuing in operation the law of the 6th April, 1826, referred to in the resolution; as he cannot suppose, in a litigation of this importance, involving the nicest questions of fact with the most complex questions of law, and requiring several days for the trial of one cause, that the Attorney-General can be expected, alone and without aid, either to try the causes, or to look up, subpoena and procure the attendance of a large number of witnesses scattered over an extensive section of country, and whose residences are not confined to our own state.

Respectfully submitted.

SILAS WRIGHT, JR.

Dated Albany, 2d April, 1830.

DOCUMENT.

Payments made out of the Treasury, upon the certificate of the Governor, for the time being, pursuant to the second section of the act, entitled "An act more effectually to provide for defending the titles of certain persons in the counties of Putnam and Dutchess, derived from the people of this state, against any claim set up by or under the children of Roger Morris and Mary his wife, deceased," passed April 8th, 1826.

Payments to Assistant Counsel.

1826, Nov. 6,	To Martin Van Buren, counsel fee,...	\$500 00
" " 15,	" Ogden Hoffman, " ...	250 00
" Dec. 8,	" Pierre C. Van Wyck, " ...	500 00
" " 29,	" Daniel Webster, " ...	500 00
1827, Nov. 17,	" James Kent, " ...	500 00
" " 21,	" Martin Van Buren, " ...	500 00
" " "	" Daniel Webster, " ...	500 00
1828, Aug. 4,	" Ogden Hoffman, " ...	250 00
1829, Mar. 13,	" Martin Van Buren, " ...	500 00
" June 6,	" Daniel Webster, " ...	100 00
" Nov. 9,	" " " " ...	100 00
1830, Jan. 2,	" Ogden Hoffman, " ...	500 00
" " 9,	" Daniel Webster, " ...	2,000 00
		<hr/> <hr/>
		\$6,700 00

Payments to the Attorney-General, for extra services and expenses.

1826, Nov. 6,	To Sam'l. A. Talcott, Attorney-General,	\$500 00
1828, Oct. 13,	" " " " "	643 00
1829, Mar. 13,	" Greene C. Bronson, " "	200 00
" June 6,	" " " " "	208 77
" Nov. 25,	" " " " "	377 85
" Dec. 28,	" " " " "	500 00
		<hr/> <hr/>
		\$2,429 62

Payments for other expenses in the premises.

1827, April 18,	To Henry B. Cowles, agent, for services and expenses, subpoenaing, looking up and paying witnesses, searching for payers, preparing for trial and attending the same,.....	\$300 00
" Oct. 22,	do do do	625 46
" Nov. 24,	To Thomas J. Oakley, Atty's. costs in ejectment suit, vs. Kelley,.....	218 43
1828, April 22,	To Henry B. Cowles, as agent as above,	1,044 51
1829, June 6,	" do do	321 90
" " "	" Frederick J. Betts, Esq. clerk's fees,	37 25
" Nov. 25,	" Henry B. Cowles, as agent as above,	620 66
" " "	" S. Goodman, Jr. for engrossing bill of exceptions,.....	14 61
" " 26,	" Henry B. Cowles, as agent as above, being the balance of his account,	649 42
1830, Mar. 11,	" Croswell & Van Benthuyzen, for printing cases for U. S. sup. court,	117 30
		<hr/>
		\$3,949 54
		<hr/>

IN ASSEMBLY,

March 31, 1830.

REPORT

Of the Select Committee on the Bill entitled "An act respecting sales by auctioneers in the city of New-York and elsewhere."

Mr. Curtis, from the select committee to whom was referred the bill entitled "An act respecting sales by auctioneers in the city of New-York and elsewhere,"

REPORTED :

That they have had under consideration the original bill, together with the substitute ; and while your committee are clearly of opinion that no increase of duties upon goods sold at auction, can in any manner conflict either with the spirit or letter of the constitution, provided such increase be not so great as to afford grounds for apprehending a decrease in the aggregate of those duties as prized by the law of 1817 ; yet inasmuch as gentlemen whose opinions are entitled to great weight, have expressed doubts upon this subject, and inasmuch as the evils sought to be prevented, can be, in a great degree if not altogether, reached without resort to an increase of duties, the committee have therefore come to the conclusion to strike out of the amended bill all after the fifth section thereof, except the twelfth.

In conformity with these views, the committee have prepared a bill, and ask leave to introduce the same.

IN ASSEMBLY,

April 3, 1830.

REPORT

**Of the Comptroller, in obedience to a Resolution of
the Hon. the Assembly of the 24th ult.**

STATE OF NEW-YORK, }
COMPTROLLER'S OFFICE. }

The Comptroller, in obedience to the following resolution from
the Hon. the Assembly, to wit:

Resolved, That the Comptroller be required to report to this house to whom or to what corporation or body politic, the monies in any way belonging to or connected with the general fund, the common school fund, the canal fund, or the literature fund, have been loaned, except loans authorised by special acts of the legislature; and on what terms and rate of interest, when payable, and briefly how secured, whether by note, bond or mortgage: and also, with whom or what corporation or body politic deposits have been and are made of any such monies, and on what terms and at what rate of interest, and what is the usual and general amount and duration of such deposits, and whether any money so deposited has to his knowledge been loaned to individuals, and if so, to whom and on what terms—

RESPECTFULLY REPORTS:

That the present duties of his office do not permit him to appropriate that share of his own time and services, or of the time and services of the clerks in the office, which would be required to give a full answer to the resolution, and to enable him to furnish that answer within the probable limits of the present session of the legislature. The approaching tax sale imperiously commands the con-

stant attention of all the hands in the office, and must continue to do so until it is closed. As, however, a reference may be made to documents to be found upon the journals of the Assembly, answering in substance the most difficult part of the resolution, and as, with the aid of such reference, the whole resolution may be answered in a general manner, perhaps sufficiently minute to accomplish all the purposes of legislation, and without essentially interfering with the preparations for the said tax sale, the Comptroller has considered it his duty to offer such answer, and has been induced to hope that the above reasons will excuse him from a more perfect fulfilment of the requisitions of the Hon. the Assembly.

Of the date of the 3d of March, 1829, a report was made from this office embracing the loans theretofore made "by this state to individuals, companies and incorporations which then remained unpaid, specifying the time when payable and the amount due upon each loan respectively," embracing as is believed, all the loans which have been made by the state, from any of its funds, to individuals, companies or incorporations, and which yet remain unsettled upon the books of this office. This report is to be found in the Journal of the Assembly of the last year, at page 591, or among the documents of the last year, numbered "141, see Assembly." These loans were all made pursuant to special acts of the legislature, and were originally mostly made from the capital of the common school fund; but by a transfer of securities between the general fund and the common school fund, pursuant to an act passed April 13, 1819, these loans were transferred to and now remain the property of the general fund.

All the loans were made at an interest of seven per cent, or have since been put at seven per cent by acts of the legislature, extending their time of payment after the original loan became due, so that now it is believed none bear a different or a less rate of interest; and all were secured by mortgage upon lands supposed at the time to be sufficient in value to secure the loan, with the collateral bond of the mortgagor or some other person in his stead. These loans were made payable in instalments, but without any uniformity as to the number of annual payments or the length of credit given. Yet it is probably safe to say that there is, at this time, no outstanding loan of this description which is not, upon the face of the security, all due, either by failure of previous payments, or by the expiration of the whole time given.

The deposits of the monies belonging to the general fund, the common school fund, and the literature fund, are by law required to be made in such bank or banks in the city of Albany as in the opinion of the Comptroller and Treasurer shall be secure, and pay the highest rate of interest to the state for such deposit, (see chapter 8, title 4, section 7, part 1 of the Revised Statutes.) Pursuant to this provision of the law, notices were issued in the month of March, 1829, signed by the Comptroller and Treasurer, to each of the banks in this city, informing them that sealed proposals would be received at any time during that month for the said deposits. On the 1st day of April last it was found that but one offer had been made pursuant to the said notices, which offer was from the Commercial bank of this city, and was to give an interest of three per cent upon all sums in deposit; and in case it should at any time be necessary to make loans to answer the calls upon the treasury, to make such loans or to use its best efforts to obtain them at an interest not exceeding five per cent.

This proposition was from necessity accepted, being the only one made, and a contract was executed between the Comptroller and Treasurer of the one part, and the bank of the other part, according to its terms. A copy of that contract is annexed to this report, and pursuant to its provisions this deposit is now made.

The monies belonging to the canal fund are entirely under the management of the commissioners of the canal fund, and are kept on deposit equally in the New-York State bank and in the Mechanics' and Farmers' bank of this city, at an interest upon all sums in deposit of three and a half per cent. This deposit has continued with these banks and at this rate of interest for some years, but the amounts in deposit have varied according to the calls upon the fund, and to the opportunities of making investments more permanently or at a better rate of interest. As a sample of the great fluctuations of these deposits, it may be proper to state that on the 1st of July last there was not a cent in deposit in the canal fund banks, but on the contrary, those banks were overdrawn to a considerable amount to meet the quarter's interest payable on that day. This reduction of the amount in deposit was caused by the extinguishment of the canal stock received from the literature fund, and purchased from the general fund. But these banks were soon again supplied by the collections of tolls of the season; and from this source and the other sources of revenue of the canal fund, these deposits had increased on the 1st of January last to more than half a million of dollars.

It should, however, be recollected, that none of the tolls of the year had been received in the depositing banks in this city on the 1st July.

The tolls upon the canals, as collected, are deposited in the several banks along the line of the canals, at regular intervals fixed by the canal board, varying from one to six times in each week, according to the amount of money collected at any given place, and to the facilities of depositing at the same place. When there is no bank at the collector's office, an arrangement is made under the direction of the canal board with some bank, to appoint an agent residing in the vicinity of the office, and to receive the deposits from the collector through the agent so appointed, the money being in all cases at the risk of the bank after it is delivered to their agent. To compensate the bank for this trouble, for the risk of transmission, and for answering the drafts of the Treasurer in money current with the depositing banks in this city, they are permitted to receive the collections of each month, and to retain the use of the money thirty days after the close of the month, without interest. This arrangement has hitherto been universal, and the deposit of the monies collected for duties on salt was during the last summer made upon the same terms with the Ontario Branch bank at Utica, through an agent appointed by the bank at Syracuse for that purpose. All these deposits have been directed by the canal board to be made in the same manner and upon the same terms, for the coming season.

The auction duties and some other collections of public money in New-York and a few of the southern counties of the state, are made in the Manhattan bank in the city of New-York, but no interest is paid upon deposits by that bank, and therefore no sums are suffered to remain there for any length of time after notice of the deposits reach this office.

The amount and duration of the deposits in the Commercial bank at the present time and for the coming year, will be very uncertain, as it is more than probable that the bank will be overdrawn for a large portion of the time, inasmuch as it is now known that the receipts from all the sources from which deposits are made in that bank, cannot more than equal, and probably will fall short of the calls upon the treasury.

The Comptroller is entirely unable to say what disposition is made by any of the banks of the public monies deposited in them respec-

tively, whether it is loaned at all, and if loaned, to whom or upon what terms. And he supposes any inquiries by him with a view to obtain this information, would be considered an unwarrantable scrutiny into the business of those institutions and their customers, unless the safety of the deposits should be considered as endangered; and in that case, the right is expressly reserved in all the contracts for deposits, to withdraw them at once, which right would be promptly enforced should appearances of danger at any time present themselves.

Respectfully submitted.

SILAS WRIGHT, Jr.

Dated Albany, 3d April, 1830.

DOCUMENT.

An Agreement between Silas Wright, jr., Comptroller, and Abraham Keyser, Treasurer of the State of New-York, of the first part, and the President, Directors and Company of the Commercial Bank in the city of Albany, of the second part,

Witnesseth, That the party of the first part agree and covenant in their official capacity to and with the said party of the second part, to deposit in the bank of the said party of the second part the monies now in the treasury, and such as shall be received by the Treasurer, (except such as shall be received into the Manhattan bank in New-York,) which belong to the funds of the state of New-York, except the canal fund, for one year, commencing on the 1st day of April instant; and the party of the second part do covenant and agree to and with the people of the state of New-York, as follows:

1st. That they will pay without delay in specie, or in bills of equal value with specie, all checks that shall be drawn by the Treasurer of the state on the cashier of the said party of the second part, if any funds are on deposit in their bank.

2d. That they will allow to the said people an interest on the deposits of money that shall be paid into the said bank, at the rate of three per cent per annum, to be paid quarter yearly, and calculated on the average monthly balances for each month, to be taken from the books of the Treasurer.

3d. That they will, when the exigencies of the state require, give every practicable facility in making, from time to time, temporary loans to the state, at a rate of interest not exceeding five per cent per annum. This agreement to be annulled at the option of either party after the expiration of one year, and sooner by the parties of the first part, if they shall have reason to suspect the institution to be insolvent, or unable to make immediate payment of the amount that may be on deposit belonging to the state.

[L. s.]
[L. s.]
[L. s.]

H. BARTOW, *Cashier.*

SILAS WRIGHT, Jr. *Comptroller.*

A. KEYSER, *Treasurer.*

Signed, sealed and delivered in presence of J. STRINGHAM.

IN SENATE,

April 3, 1830.

REPORT

Of the Committee on Banks and Insurance Companies, in obedience to resolution of the Senate of the 5th of March.

Mr. Allen, from the committee on banks and insurance companies, to which was referred the bill from the Assembly, to incorporate the president, directors and company, of the bank of Poughkeepsie, and in obedience to the resolution of the Senate, passed the 5th of March, 1830,

REPORTED AS FOLLOWS, TO WIT :

That the population of Poughkeepsie, (the place where the bank is to be located for business,) is estimated at five thousand five hundred inhabitants, and the county of Dutchess, at forty-six thousand, six hundred and ninety-eight.

The real and personal estate in the county of Dutchess, was valued in 1828, at \$15,277,571, and in the village of Poughkeepsie, at about \$2,000,000.

In point of wealth, the county of Dutchess exceeds every county in the state, except New-York. The valuation of property in Albany and Oneida, are next in amount to Dutchess, being about \$10,000,000 each ; and while the banking capital in the county of Albany is about one-seventh part of the whole valuation of the real and personal estate, and in the county of Oneida, about one-tenth part, that in the county of Dutchess, is only about the two-hundredth part of the amount of the valuation, being but \$75,000.

[No. 383.]

It appears from a table compiled for the Gazetteer of this state, that in 1823, Dutchess employed more capital for manufacturing purposes, than any other county in the state. The amount thus employed, is stated at \$390,700, and the annual payment to the persons employed, at \$89,040. There are now in operation, as stated by Williams, in his Register for 1830, eleven woollen, nine cotton, and three wool carding factories, in the county.

The village of Poughkeepsie is a place of considerable business, and carries on an extensive trade in freighting the products of the county to the city of New-York, which employs a large amount of tonnage in vessels, and requires a respectable capital to be invested for the purpose.

The committee are of opinion, from the facts thus briefly stated, that additional banking capital may be advantageously employed in the county of Dutchess.

The only bank in this county, is the Dutchess county bank, with a capital paid in of \$75,000; and on this capital, as appears by the annual return of that institution, they have discounted and loaned \$275,903, nearly four times the amount of their capital; the credit of the institution therefore, in addition to their capital, has been loaned to the amount of more than \$200,000, and consequently more than twenty per cent per annum has been realized from the business of the bank, on the capital paid in.

This fact, in the opinion of the committee, is conclusive evidence, that the business of the county is sufficient to sustain another institution profitably to the stockholders, and advantageous to the trading part of the community.

The committee believe also, that whenever the business of a place is sufficient to sustain more than one banking institution, an additional one is useful, and ought to be placed there, as by this means they act as a check on each other, and by the daily return of their notes for payment, prevent excessive issues, and the too frequent fluctuations in the amount of their loans and discounts.

The committee are of opinion therefore, from the best consideration they have been able to bestow on the subject, that the trading and manufacturing interests of the county of Dutchess requires the accommodation of an additional bank, and they therefore recommend the passage of the bill referred to them.

IN SENATE,

April 5, 1830.

REPORT

Of the Committee on Banks and Insurance Companies, on the bill from the Assembly to incorporate the Otsego County Bank.

Mr. Allen, from the committee on banks and insurance companies, to which was referred the bill from the Assembly to incorporate the president and directors of the Otsego county bank, and in accordance with the resolution passed by the Senate on the 5th March, 1830,

REPORTED AS FOLLOWS, TO WIT:

That the village of Cooperstown, where it is intended to locate the bank alluded to, is the capital of the county of Otsego, and is very eligibly situated at the south end of Otsego lake, on the great western turnpike road. It contains a population of about eighteen hundred inhabitants, and is a place of considerable business.

There are seven cotton, and two woollen factories in the county, in which there is invested a capital of about one and a half millions of dollars, and the larger portion of these establishments are situated within six miles of the village of Cooperstown.

There is no business perhaps, that require more the aid of the banking facilities, than that of the manufacture of cloth. Most of the raw material must be purchased with cash, or at short credits, while the articles manufactured must be sent to a distant market, and at an additional expense. If the wants of the consumers are not such as to bring forth purchasers, the property must lay over, or be sold at a sacrifice; and even if a ready sale can be effected, the custom of

business is such, that a much more extended credit must be given, than what can be obtained by the manufacturer, in the purchase of raw material, or for the labor employed in bringing it to a marketable state.

The petitioners for this bank, believe that the agriculture and commerce of the county of Otsego, is equal in productiveness and activity, to that of any other county of the same magnitude in the state. That more than \$75,000 annually, is employed in the lumber business, in rafting on the Susquehannah and Delaware rivers.

The village of Cooperstown contains nine dry goods stores, besides groceries, and to which may be added, the usual mechanical operations carried on in a thriving and populous place. In the towns south of Cooperstown, it is stated there are about fifty stores, several tanneries, paper-mills, distilleries, and an extensive business carried on in the manufacture of shingles.

The committee are assured by the applicants, that should the bank be chartered, the stock will be promptly taken up within the county, and that the loans and discounts will be used in its business transactions.

These are all the facts, having a bearing on the subject, which have come to the knowledge of the committee, and which they have deemed of sufficient importance to communicate, and they submit them to the Senate therefore, believing they will be duly estimated, in deciding on the question, when regularly before them.

IN SENATE,

April 5, 1830.

REPORT

Of the Committee on Banks and Insurance Companies, on the bill from the Assembly, to incorporate the president, directors and company of the Butchers' and Drovers' Bank.

Mr, Allen, from the committee on banks and insurance companies, to which was referred the bill from the Assembly to incorporate the president, directors and company of the Butchers' and Drovers' Bank,

REPORTED AS FOLLOWS, TO WIT:

That many of the applicants for this corporation are personally known to the committee as men of property and respectability.

The committee are informed, there are at least four hundred butchers in the city of New-York, who are men of responsibility, and who are ready to subscribe and pay for the stock of this bank, should the charter be granted them as prayed for.

The only argument, in the opinion of the committee, that can be urged in favor of this application is, the convenience of those residing in the upper wards of the city of New-York, and particularly the butchers and drovers, who are the principal part of the petitioners.

The place where this bank is to be located, in the Bowery, north of Grand-street, is from one and a half to two miles from Wall-street, where nearly all the monied institutions of the city transact their business. To a person in active trade, and at this distance from the principal banking institutions, and who must travel one or

two miles to make the daily deposits of his receipts, or risk the loss that may be sustained in a city such as New-York, continually infested by hundreds of those who are lying in wait for an opportunity to rob, the loss of time and the inconvenience must be very great. To such, therefore, and there are many of them in the part of the city alluded to, the establishment of the institution under consideration must be very desirable. It will also be a great convenience to many persons who have retired from business, and who reside in the vicinity and beyond the place of location, as a place of safe deposit for their receipts of cash; and it is from these depositors that a bank derives many advantages, both in the use of the money not immediately required by the owner, and by the circulation of their bills, when the money deposited shall be drawn out for disbursement. But there is no part of the community who will be more benefitted than the butchers themselves. The business of the butcher keeps him employed steadily from an early hour in the morning until two or three o'clock in the afternoon, an hour when the business of the banks is usually closed. It is proposed, therefore, that the time for business in the bank they are applying for, shall extend the hour for closing to four or five o'clock in the afternoon.

It is understood, also, that a majority of the directors of the bank will be taken from that class of citizens; and as they will possess better information of the responsibility and character of those of the same calling, and who are engaged in the same business with themselves than the directors of the mercantile banks in the city can possess, the butchers generally, as well as the drovers with whom they must be best acquainted, will receive the necessary facilities in aid of their business, with which, as they state, they are not accommodated by the other institutions.

The committee are informed, that according to an estimate made on the subject, about twenty-five thousand dollars is weekly disbursed in the city of New-York for the purchase and sale of cattle; making an aggregate annual sum of one million two hundred and ninety thousand dollars. If the business of the butchers and drovers, therefore, together with that of the traders and mechanics in that section of the city, shall be brought to this bank, there cannot be a doubt but that they will be able to sustain it.

The committee can see no reason, under all the circumstances of the case, and as they are at present advised, why the bill should not pass.

IN SENATE,

April 5, 1830.

REPORT

Of Mr. Allen from the Committee on Banks and Insurance Companies, on the bill from the Assembly, to incorporate the President, Directors and Company of the Farmers' and Mechanics' Bank of Catskill.

Mr. Allen, from the Committee on Banks and Insurance Companies, to which was referred the bill from the Assembly, to incorporate the President, Directors and Company of the Farmers' and Mechanics' Bank of Catskill, and in accordance with the resolution of the Senate, of the 5th of March, 1830,

REPORTED AS FOLLOWS, TO WIT:

That the village of Catskill has a banking establishment, with a capital of \$110,000, now located there; but the petitioners for the bill referred to the committee, nevertheless declare, that the convenience and prosperity of the manufacturing and trading part of the community, require additional banking facilities, as the present bank is entirely insufficient to afford that accomodation, which the large extent of country doing business at that place, requires.

The manufacturing pursuits of the county of Greene, appear to be, mainly, confined to that of leather. There are thirty establishments in the county devoted to this object; and, the committee are informed, that the value of the property annually prepared for a market, is not less than a million of dollars.

In addition to these, there are three woollen factories, and two paper mills, each of which are doing a considerable business. Large quantities of grain are annually purchased in the town of Catskill,

to be manufactured into flour by the mills erected on the streams in the vicinity of the village ; the amount thus purchased is estimated at a sum annually of one hundred thousand dollars.

In the village of Catskill, as the committee are informed, an extensive trade is carried on in the purchase of lumber for the New-York market, and in the purchasing, slaughtering and barrelling of beeves, is estimated to amount annually to about two hundred and twenty thousand dollars.

The freighting business of this village is very considerable, and employs more than one thousand tons of vessels. To the foregoing may be added, the traders in dry goods and groceries, and the various mechanical pursuits ; all require occasional assistance from the operations of a banking institution.

The bank of Catskill was originally chartered with a capital of \$350,000 ; but, it appears, by the report of the Comptroller, that only \$88,000 of said capital has been called for by the directors of that institution. In 1828 they reported to the Legislature the amount of their capital paid in to be \$110,000. This addition was made from the surplus profits of the bank, amounting to \$22,000. This bank, as the committee are informed, has regularly divided nine per cent annually to their stockholders, and have, in addition, been enabled to accumulate a surplus profit of about \$34,000 ; twenty-two of which had been added to the shares of their stockholders, and \$12,000 remain to be divided, or added to their capital, as they may deem most expedient.

The loans and disbursements of this bank, as reported to the Legislature in 1828, amounted to \$429,105, and their bills in circulation was stated to be \$274,510. By the act renewing the charter of the Catskill bank, they are compelled to reduce the amount of their loans and discounts, on the first of July next, to twice and a half the amount of their capital paid in, and of the amount of notes in circulation, to twice the amount. They will therefore be compelled to call in, of their loans, \$154,105, and of their notes, \$54,510. This fact, it appears to the committee, is a strong circumstance in favor of the passage of the bill under consideration, and ought to have a due influence in the decision of the question.

These are the most material facts which have come to the knowledge of the committee, and they are respectfully submitted to the consideration of the Senate.

IN ASSEMBLY,

April 5, 1830.

PETITION

Of a committee appointed by the citizens of Rochester to memorialize the Legislature on the subject of our Common Schools.

*To the Honorable the Legislature of the State of New-York,
in Senate and Assembly convened.*

Your petitioners, having been appointed by a numerous meeting of the citizens of Rochester to memorialize your honorable body to make provision for the improvement of our common schools, by providing,

1st, For the teaching (in addition to the present course) of those arts and sciences, in a plain and practical manner, which are most applicable to the business of real life—as chemistry, natural philosophy and the like ;

2d, By providing for the collecting and diffusing the knowledge of such improvements in the art of teaching, as are worthy of adoption ;

3d, By providing against the employment of incompetent teachers ;

4th, By providing for the use of the most approved school books, and

Lastly, by providing for a more efficient supervision of all our common schools, and the proper instruction of teachers in every part of the state, on the most approved principles—have, in pursu-

ance of this duty, devoted that time and reflection which the great importance of the subject demands.

While they acknowledge with grateful feelings the wisdom of that policy which dictated and carried into effect our common school system, the extensive benefits of which they do not deny, they at the same time believe that a patient and thorough investigation of the subject will carry conviction to every enlightened mind, that not only evils exist which require a speedy remedy, but that the time has arrived when an advance must be made, or we shall soon find our system far behind some of our sister states and the spirit of the age.

It is believed that an investigation will show little or no improvement for the last six years, and that we may look upon the system as having now arrived at maturity.

The spirit of enterprize and improvement seems to be kindled on every subject more than this. Prison discipline, benevolent and literary institutions, canals, river navigation, supplying our large towns with fuel; all these seem to have occupied the attention of past legislatures, and to have drawn copiously upon the coffers and credit of the state, while common school education has been left to grope its way, unaided by any thing further than the annual appropriation of \$100,000, amounting to something less than *six cents* to each soul in the state, or twenty-one cents to each child over five and under sixteen years of age!!! Certain it is that we have witnessed more improvement in every other department involving the public weal than in this, which is paramount to any other, if not to all.

So long ago as 1819, the grants of the state had been—

To the Regents of the University,.....	\$28,750
“ Colleges,.....	721,675
“ the Historical society,.....	12,000
“ Academies,....	35,800
“ Charitable and Free Schools,.....	25,631
“ the Literature fund,.....	201,439

making about \$1,000,000 appropriated to education in our colleges and academies, as early as 1819; to which may be added very large sums since that period, which if we include the sums authorised to be raised by lotteries for this purpose, your petitioners believe will

not fall short of the whole appropriations ever made for common schools.

By a reference to the report of the superintendent of common schools made *last year*, it will appear that returns had been received from 757 towns, and that 8,164 districts had made legal returns; that 449,113 children had been taught, from the age of five to fifteen, and 468,205 of all ages; that the average time of instruction is eight months; that the productive capital of the school fund is \$1,684,628; that the sum of \$100,000 is distributed annually among the school districts, which is a little over the annual income from the school fund; that the whole sum paid for teaching in all the common schools returned, was \$568,986, for the previous year.

The foregoing shows that \$12 is about the *average* sum paid to each district from the funds of the state, while the people pay \$54, making only \$66 the average sum paid in each district in the state for teaching, or \$8 25 per month, allowing eight months for the average time of teaching; or \$1 paid by the state to \$4 68 paid by the people. This return shows a great disparity between the sum paid by the state and by the people. It also shows a very small average sum paid in each district for teaching, which may in part account for the incompetency of the teachers employed. The school fund of the state of Connecticut is in *amount* about the same as ours, but her population being about 275,000 and ours estimated at 1,600,000, gives \$6 16 to each soul in that state, for \$1 in this state, requiring a school fund of upwards of \$10,000,000 to equal that of Connecticut according to population.

The object of this statement is not to call in question the wisdom of former legislatures, in cherishing the higher departments of education. We wish not so much to show *how much* has been done for our colleges and academies, as *how little* has been done for our common schools.

Your petitioners, with a view of arriving with greater certainty at the knowledge of existing evils in our common schools, and the cause of those evils, issued a circular to the school inspectors in the several towns in the county of Monroe, with interrogatories calculated to elicit the requisite information having a bearing upon this subject; confining their answers to the state and condition of the schools for the last six years.

The information received is—

1st, That the average proportion of instruction by male teachers, in each town is four months.

2d, By female teachers, five months.

3d, That the average number of male teachers who have received an education at our incorporated academies or colleges, is very small; say from $\frac{1}{4}$ to $\frac{1}{10}$ of the whole number employed, probably an average of $\frac{1}{8}$.

4th, That "*a great number*" of incompetent teachers has been employed, and the causes assigned are—the scarcity of competent teachers; the smallness of compensation; the fault of inspectors, in giving certificates to incompetent teachers; the yielding of inspectors to the solicitations of trustees to give a certificate, after examining a teacher and finding him deficient; the employment of female teachers during the summer months, without being examined; the law requiring a school to be taught only three months by a qualified teacher, to entitle a district to receive its quota of the public money; the neglect of inspectors to visit schools; the want of the necessary interest in many parents on the subject of the proper culture of the minds of their children, exhibiting by their neglect to visit the schools, and their disposition to use in many instances less liberality in the payment of teachers than in any other department of domestic economy.

5th, That the average compensation per month, to male teachers is \$12 to \$14, to female teachers \$4 50.

6th, That the average number of different kinds of spelling books used in each town is four, grammars four, arithmetics five, geographies four.

7th, That the inconvenience experienced from frequent changes of books, arising chiefly from the diversity of taste [or judgment in the teachers "*is very great.*"

8th, That the saving in each town, by avoiding *unnecessary* changes in school books is by some estimated at \$100, and by others less; but your petitioners, from diligent inquiry into that part of the subject, believe it to be at least \$100 *unnecessary* loss to each town—making a loss to the whole state, annually equal to \$75,000, or three fourths of the annual distribution from the school fund by the state.

In addition to this authority for existing evils, we have the decided expression of the Superintendent of common schools in his report, submitted to the Legislature on the 16th day of January last, in which he says, "that the *very serious* deficiency of competent teachers, is the great obstacle which it is necessary to remove, before we can reasonably expect to accomplish the great results, and confer the enduring benefits which were anticipated by those who have founded and those who have fostered our system of common school instruction."

We may further add the evil arising from the want of a suitable and thorough supervision of our common schools, which is little less than the evil arising from the want of qualified teachers.

The statutes of the state, make the Secretary of State, ex-officio Superintendent of common schools, and require of him to make an annual report to the Legislature, containing

"1st, A statement of the condition of the common schools of the state.

"2d, Estimates and accounts of expenditures of the school monies.

"3d, Plans for the improvement and management of the common school fund, and for the better organization of the common schools ; and,

"4th, All such matters relating to his office and the common schools, as he shall deem expedient to communicate."

It will be perceived by the foregoing, that in addition to the fiscal concerns of our common school fund, he is required to submit plans for the better organization of our common schools, and the last clause requires that he shall communicate *all* such matters relating to his office, and the common schools, as he shall deem expedient.

The demands of nearly half a million of children, will make it *expedient* that he should devote all the time in his power to this important subject. The statute in fact imposes upon him, duties which no man living can perform, equal to the exigencies of the case, especially having as he has, another important and responsible office to fill. Can it be supposed that the Secretary of State has time to examine carefully and critically all the one hundred different kinds of books used in our common schools, so as to give an opinion upon their merits and demerits ; and yet this is manifestly one of his du-

ties. Can it be expected that he should become so great a proficient in the art of teaching, as to be able to communicate most of the improvements in that art? We think not; yet this is another of his duties.

By reference to the report of the Superintendent, it appears there are in use in the schools of this state, 12 different kinds of spelling books, 12 arithmetics, 10 grammars, 12 geographies, 8 dictionaries, besides 46 readers and other books, making in all 100 kinds.

Will it be said that of the 12 kinds of spelling books in use, that all are deserving? Would not a careful comparison of these books by a competent body well versed in the art of teaching, reject at least a portion as not worthy of use? And would not a like ordeal for the others consign a portion to merited disuse?

It appears that Colburn's arithmetic is used in only eight towns in the state. This being unlike the others, deserves to be totally rejected, or more generally used. If his plan is an improvement, it should be adopted more extensively, and if not, a competent body should condemn it.

Who would venture to say that Smith's arithmetic, which is not used in a single school in the state, would not be found on examination, to be better than many, perhaps any others? Common consent has given Walker's dictionary the preference over any other, hence there are only 13 towns in the state, in which any other is used.

May it not be presumed, that certain spelling books, arithmetics, grammars and geographies, are entitled to a like preference, on the score of merit? Let a board of examination be constituted, composed of teachers employed in the state seminaries, contemplated in the annexed system, and we predict an annual saving of many thousand dollars, to the people of this state, without doing *injustice* to the authors of these books. We would by no means give to this body a dictatorial power, but we *do contend* that men whose *sole* object is to qualify teachers, are a fit body to be entrusted with the duty of *recommending* such school books as in their judgment are the best; assigning in all cases the reasons for their preference.—Heretofore the veriest dolt in book making, has been able with too great facility, to procure the sanction of respectable names to his work, and thereby our common schools have greatly suffered.

This body being the proper reference, all authors of school books will be directed to it, and their works, if deserving, would receive their approbation.

An equal or greater saving may be made in favor of this important interest, if provision were made for publishing approved school books, in large editions for circulation.

Our laws give to twenty-one regents the superintendence of our colleges and academies. Is there not then the same reason for "a multitude of counsellors" in managing the affairs of our common schools, which are more laborious and interesting?

Why require twenty-one of our most enlightened citizens to watch over fifty academies and three colleges, where only about 3,000 of our youth are taught, and leave all that concerns the education of half a million of children at our common schools, under the care of one man, and he having other arduous duties to perform?

We disclaim any intention of charging the present Superintendent with any neglect; we believe him to have been a faithful officer, and we are rejoiced to have an opportunity to say that his late report does him great credit: and we cannot but express our surprise that he has been able, consistent with his other duties, to devote so much of his attention to this subject as the report clearly indicates.

We cannot, however, but believe, that if all that relates to the *teaching and management* of our common schools should be committed to a competent board of our most enlightened citizens, with the aid of a body of professional men, who should devote their whole time and attention to the business of fitting teachers for our common schools, it would prove to be a more suitable and efficient arrangement. The fiscal concerns would of course be best managed by the Secretary of State, in whose hands we would have them.

Your petitioners flatter themselves that they have produced sufficient evidence of existing evils to call for a speedy remedy. We confess we can see no other remedy but for the state to extend her fostering hand. Nothing short of making the business of teaching a profession will effect the object, and this can not be done without a liberal pecuniary appropriation by the state. We believe it idle to expect it in any other way. The people who now, by the showing of the superintendent in his recent report, which has just come to

our hands, pay annually nearly one million of dollars, that is nine dollars to one paid by the state, are too poor to accomplish this object unaided by the state. Many districts plead inability to do as much as is already required of them. The Superintendent, in his last report, very justly says, "If the districts could be induced to give an adequate compensation and constant employment to first rate instructors, then it would be eminently useful to establish seminaries for the special purpose of training persons as professional instructors."

The present common school system has been in operation thirteen years, and either for want of ability or disposition, (no matter which,) "*adequate compensation*" has not been paid. So far from it, that the inconsiderable sum of \$66 per annum is the average wages paid for teaching in the district schools of the state. Judging then from the past, we cannot expect any material change in this respect until produced by a special liberality on the part of the state, and it is believed that this is the only way to remedy the existing evils.

The superintendent, in his report, further says: "There are now in the state more than 8,800 organized school districts, and to give full effect to the system it is necessary to have a person in each of these schools, who is not only thoroughly educated himself, but one who is 'apt to teach,' and is skilled in the art of communicating to others the information which he possesses."

The question then is, how shall we soonest, and at an expense within the means of the state, arrive at so desirable a state of things? Your petitioners answer in no other way but by state seminaries, to qualify at least a portion of these teachers, who can, by being dispersed through the state, qualify other teachers, and in this manner accomplish the desired object in the shortest possible time.

As there are 8,800 schools, in most of which two teachers, to wit, one male and one female are employed, making in all about 17,000 teachers of both sexes annually employed in the state, and it being as desirable to provide for the education of female as male teachers, a plan contemplating the teaching of so large a number as *even the males*, at state seminaries, at the expense of the state, within a reasonable time, is considered altogether impracticable.

Your petitioners have, therefore, in the plan herewith submitted, provided for the education at the state seminaries of only one male

teacher for each town, who will be competent to qualify all teachers, both male and female, in the town in which he is employed, in which it is contemplated to establish a *central school* for this object, under his charge.

We do not believe the people have the ability, even if they had the disposition, to pay such a price for teachers as would induce suitable persons to pursue teaching as a profession, but we *do believe*, when we contemplate how much the people of this state have been induced to do by means of a comparatively small annual appropriation on the part of the state, that they will in this matter meet the state at least on middle ground, and the system recommended is accordingly framed upon this supposition, and requires as great if not a greater contribution from the people than from the treasury of the state.

Your petitioners believe that an examination of the plan will satisfy all, that there can be very little inducement for a person to enter the state seminaries unless he has previously determined to follow teaching professionally, and that after being qualified at the public expense, there is *in the system* a sufficient guaranty that he will thus follow it. We have but one experiment in this country illustrating this subject, and that, in its results, supports our position.

The national government have for many years, and at a very considerable expense, conducted a military academy at West-Point, and so high a reputation has it acquired, that, independent of its advantages as a military school, it affords a better opportunity than any other institution in this country for the acquirement of a thorough and solid education, and yet very few of the youths who are educated there at the public expense, leave the service of the government, although it is left entirely at their option to leave or continue as they see fit.

We believe a similar result would attend the adoption of the plan for educating teachers at the expense of the state; at least, we can see no good reason why this would not be the case.

We are aware that an opinion has often been expressed, that our academies afford the requisite means for the qualification of teachers of common schools. An inquiry of the inspectors of common schools in this county, has resulted in the conviction that a "*very*

small proportion of the teachers employed during the last six years, have received their education at our colleges or academies.

Besides, we do not believe it will be contended after an investigation of the subject, that any place can be equal for this object, to state seminaries, established for the *exclusive* object of educating teachers. Has the *art of teaching* ever been any part of the studies at our colleges and academies? We believe not. It might be apprehended by the patrons of our academies that the establishment of such seminaries would injure them by drawing away students which they would have otherwise received. But when it is taken into consideration, that the academies have heretofore furnished only a very small proportion of the teachers of common schools, and that the course contemplated in the state seminaries, neither comprehends the dead languages nor otherwise interferes with the specific object of the academies, we think their apprehensions will cease.

Perhaps even the proper time has never before arrived, when it was the part of wisdom and prudence, to rely so implicitly upon the future resources of the state, as to warrant a liberal appropriation for this important object.

Your petitioners, however, believe that the time has *now come*, when the people of this state will, with great unanimity, call for such appropriations as to secure a more elevated system of common school education.

The late Governor Clinton, and our present Acting Governor, have both said in their public messages, that the canal debt will be paid off in a few years, and the commissioners of the canal fund have shewn by a report to a former Legislature, that it will be liquidated in 1840. Your petitioners have diligently inquired into the grounds for such an opinion, which has resulted in a corroboration of the opinion thus expressed by the state authorities.

If then it can be reasonably anticipated that the canal debt will be extinguished in ten years, what better appropriation can be made, for at least a part of the surplus revenue of our canals, which cannot be less after that period than three-fourths of a million of dollars per annum, after deducting cost of repairs, and expenses of management. The creation of stock redeemable at the pleasure of the government, after that period, it is believed could not only be redeem-

ed with convenience to the state, but must meet with an advantageous sale in the market at this time ; certainly as good as par, for five per cent stock.

Besides this, there will be the duty on salt, which may be fairly estimated at that period, at not less than \$200,000 per annum, amounting to very nearly the sum required by the plan herewith submitted, when it shall have been put into full operation. We have the further contingency of the auction duties after that period, which now exceed \$200,000 annually, to say nothing of what may be expected from the general government, as our quota of the sales of the public lands, and the surplus revenue.

If then the state has the means, of which your petitioners do not entertain a doubt, thence we believe there is a solemn obligation resting upon every real republican, to strengthen the foundation upon which republicanism rests. This foundation is knowledge and virtue in the mass of the people. We have the experience of all history, against the ultimate success of our great political experiment, warning us that if we would avoid those dangers which no free government has yet survived, it must be by taking such precautions as none has ever yet taken. Let us listen to this monitory voice, and take the best of all possible precautions, by diffusing intelligence far and wide among the people.

The eyes of the world are directed to this country. We possess an extensive territory, and will soon be the most populous nation of the earth. The sceptre of empire is soon to pass beyond the western mountains.

“ It has been an axiom with tyrants, and all enemies to republics, that extensive empire is incompatible with political liberty.” We are now trying this experiment, and nothing can secure a favorable result but a continued watchfulness of the great subject of educating and enlightening our *whole* population. No subject can take precedence of this in importance. The universal diffusion of knowledge, is our only reliance. This is emphatically the anchor of our hope ; this is the ark of our safety.

But there is another claim upon us, and that is to enhance the happiness of half a million of the youth of our state, “ who plead like angels, trumpet tongued.”

It is not only the cause of the rising generation, it is the cause of unborn millions we plead. We ask you to *open to the poor, and those of limited means, "the highway of knowledge which cannot now be travelled, without paying an enormous toll."* We ask you to take measures to elevate the standard of education among the great mass of the people; to awaken the whole intellect of the state, and to elicit talent wherever found, whether in the cottage or in the palace.

By doing this, "we hope to excite a feeling of respectability, and a sense of character, by enlarging the capacity and increasing the sphere of intellectual enjoyment. By *general and higher* instruction we seek to purify the whole moral atmosphere; to keep good sentiments uppermost. We do not expect all men to be philosophers or statesmen, but we hope and expect to increase the stock of individual, and thereby of public happiness;" for it will not be denied that the largest amount of public happiness will be enjoyed by that state or nation, (having a free government) in which the advantages of education are most enjoyed.

There is a change going on in the world, intimately connected with the diffusion of knowledge among the great mass of civilized men. The sciences heretofore, have been as "*a sealed book*," to all but the rich; they have been entangled in hard words and rendered forbidding to the student, who could not avail himself of college instruction. Now these barriers to the acquisition of science, are thrown down, and mystery is giving place to a plain and practical system of education, and to elementary books, written in familiar and intelligible language. There never has been so propitious a time for our whole population to be well educated, at a moderate expense as the present, and if they can but be awakened to embrace the opportunities within their reach, they will reap a rich reward.

This contemplated improvement in our common schools, will, if adopted, give a new impulse to our academies, and that will give a like impulse to our colleges, and the happy effect of rivalry will be felt throughout every department of learning in our state. This feeling, like the mania for internal improvements, will extend itself into other states, and its happy influence will be experienced throughout our nation.

What a cheering prospect to the patriot and philanthropist, to behold these states striving with each other, for mastery in the glorious march of mind.

To remedy the evils complained of, and to attain the important objects set forth in this memorial, it is the opinion of your petitioners, and of a public meeting of their fellow-citizens, to whose decision was submitted this memorial with the plan annexed, that seminaries for the education of teachers should be immediately established by the state. They have accordingly prepared a detailed plan or system of education, designed to accomplish the desired object and remedy the existing evils in the shortest possible time.

This is herewith submitted, together with the reasons that induced its adoption, and it is hoped it will be received by your honorable body, not as proceeding from a spirit of dictation, but from a sincere desire and hope that, with all its imperfections, it may prove at least a *clue* to a system which will eventuate in great good to our favored and happy state.

The plan of educating teachers at the public expense is no Utopian scheme: the illustrious Clinton long since recommended it in a message to the Legislature. It has been in successful operation in Prussia and Saxony for a number of years, and several of our most able journalists have passed their judgment in its favor.

Your petitioners have not recommended this plan in haste, but after a thorough examination and much deliberation; and should it be adopted, and carefully watched in its progress and amended as defects appear, we can not but flatter ourselves that it will be the means of constantly filling our state with thousands of happy human beings.

A good system of education for the citizens of a republic, is the proudest monument its legislators can erect.

Should your honorable body, in its wisdom, see fit by legislative provisions to place the cause of popular education in our state on the advanced and permanent footing contemplated in this plan, we believe it will meet with the warmest approbation of our fellow-citizens, and that the gratitude of those who shall hereafter enjoy its benefits, and of those who shall fill the places you now occupy, will

continue to be expressed in after time, as long as this our happy government shall endure.

And your petitioners, as in duty bound, will ever pray.

JOSEPH PENNEY,
O. C. COMSTOCK,
MATTHEW BROWN, jun.
LEVI WARD, jun.
HEMAN NORTON.

Committee appointed by the citizens of Rochester.
Rochester, 20th March, 1830.

DOCUMENT.

The Outlines and Reasons of a Plan for the Improvement of Common School Instruction in the State of New-York, prepared at the instance of a public meeting of the citizens of Rochester, Monroe county, and by their order respectfully submitted to the Hon. the Legislature of the State in Senate and Assembly convened.

Preliminary Observations.

The improvements aimed at in the following plan are predicated on these *two* considerations, viz :

1st. That there are admitted to exist certain great *defects* in the practical execution of the present common school system, which in a considerable degree frustrate the benevolent intention of the law in that case, and of the founders and friends of this important institution, and that call for a speedy remedy.

2d. That the spirit of the age and the interests of the state require that some *advance* should be now made both in the amount and quality of instruction which our citizens enjoy in the common schools.

The *defects* to be remedied are—

1st. The incompetency of the teachers in many instances, arising partly from the want of due attention in the inspectors, and chiefly from the fact, that the laborious and important profession of teacher is neither so respected nor rewarded in the community as to induce men of the proper talents and education to make it a business for life.

2d. As a necessary consequence of the preceding, we have on the average a low grade of instruction—either the total absence of improved methods of teaching and often of the most improved school books ; or by a superficial employment of the mere form of such improvements, without solid attainments and experience, we have all the evils of a plausible empiricism.

3d. In regard to school books, we labor under two evils. They are very unnecessarily numerous, and from the different taste of teachers, very frequently changed—imposing a heavy tax on the means of education. They are in too many instances, sold at too high a price, in consideration of their inferior quality. Such are some of the evils to be remedied.

The *improvements in advance* which we think demanded by the spirit of the age and the interests of the state, are—That the elements of the natural sciences, in a simplified form and adapted to the purposes of practical life, should be taught in our common schools, together with such instruction in other branches, as might directly subserve the enlightened discharge of the various civil duties devolving on every citizen of a free state. The position taken

on this point by the Secretary of State in his late report on common schools, must be considered self evident to every reflecting mind—
"That the course of education in the common schools ought to be adapted to the duties devolving on the person instructed."

While our colleges and academies are expected to supply the demands of *literature* properly so called, and whatever is peculiar to the learned professions is to be found in seminaries for those special objects, it is to be remembered that the *distinctive province* of our common schools is to train the *public mind*, to qualify the *great mass of the people* for enjoying the privileges and discharging the duties that involve our whole national interests. Might not these schools be made the channels of permanent and progressive improvement to the great national profession of agriculture as well as the arts and manufactures, by diffusing through them the scientific and elementary principles connected with successful practice? Might they not be made the medium of a rapid and perfect transmission through every portion of the state, of all solid improvements connected with the progress of a free and civilized people? And would they not in this case become greatly enhanced to the adult part of the community, and consequently secure from them a higher esteem and a more adequate support?

To attain such advantages, and provide a remedy for the acknowledged defects of our present system is the object proposed in the following plan.

Its particular provisions are designed—

- 1st. To furnish a competent supply of well qualified teachers.
- 2d. To diffuse the benefits of good teaching, at an early period, through all the districts in the state, and to accomplish the intention of the law as to an efficient inspection.
- 3d. To secure such a degree of respect and compensation to teachers, as to induce men of good talents and qualifications to make teaching a profession for life; and
- 4th. So to organize and govern the whole system of common school education, as sufficiently to protect this great interest from every kind of abuse, and to cherish it for the various useful ends it may be made to serve.

It is proposed to effect the first of these objects by the establishment of, say *three state seminaries*, for the education of teachers—the second, by promoting the erection of one central school of the most approved description, in each town, having the duties and services of its teacher so connected with all the other districts of the town as to secure the object of good teaching to all, and gradually to qualify good teachers for the whole. The hope of elevating the business of teaching into a permanent profession will be realized by the plan at first, as far as regards one teacher in each town, and beyond this it rests on the prospect of the enhanced value and higher estimate in the public mind of common school teaching under the contemplated improvements. The general government and superintendence it is proposed to commit to a board of our most enlightened citizens, to be denominated the *Regents of Common Schools*, with powers and duties relating to this interest analogous to those of the Regents of the University in relation to the cause of literature.

The more particular details of the plan may be presented by a brief sketch.

1st. Of the proper qualifications of a teacher.

2d. Of a state seminary for educating teachers—its government—its course of instruction—admission of students—their diplomas and privileges.

3d. Of the town central schools—their government—the duties of a central teacher in winter and in summer, &c.

4th. Of an annual meeting of the faculties, and report on school books, &c.

5th. Of the government and general superintendence of the whole.

I. Of the proper Qualifications of a Teacher.

As to literary attainments, a teacher of our common schools ought, of course, to be well acquainted with all he is required to teach, and "apt" in the art of communicating it. It is not necessary that he be a man of refined or deep learning, but his general information should be such as to command respect among the best informed in the town where he officiates.

As to his health and habits, it is at the same time important that he be as remote as possible from the enervated and inactive constitution of a mere student. In order to be useful and respectable, especially in our country towns, he should be familiarly acquainted with the active labors of country life, and able to take a part in all the occupations of rural industry. He should be thus qualified, both to interest and instruct the adult farmer, either in evening lectures or occasional intercourse, and to train up youth with judgment, whose future lives are to be devoted to these avocations. He should be competent to diffuse among the inhabitants of the country whatever advantages science can confer on practical life; and for this purpose he must be a person equally removed from the inexperience of the mere theorist and the prejudice against science usually entertained by those who are strangers to the value of science.

Finally, the teacher contemplated by this plan, in order to discharge his duties, must be confirmed in habits of patient, active and persevering labor, and must exemplify as well as inculcate those virtues that are indispensable to the future well being of his pupils. These considerations lead us to see what should be the character of the institution where such teacher is to be disciplined and educated.

II. A State Seminary.

Let a state seminary for the education of teachers be provided with a farm of from one to two hundred acres, under the direction of an intelligent but *practical* farmer, a garden and a nursery under the direction of a practical gardener and nurseryman, and a mechanics' shop with a general assortment of tools, such as the miscellaneous business of the farm and garden may require.

The labor of this farm, garden and nursery is to be performed by the students, who are in this department to be regarded and treated as apprentices, to learn the actual practice of agriculture, gardening, the cultivation of trees, and every other branch of rural industry.

In immediate connexion with these labors the students are to receive instructions from their literary teachers on the scientific principles connected with each process and operation respectively ; so as to place their labor in the light of experiment and observation illustrative of these scientific instructions. This labor, together with excursions for the purpose of collecting specimens in botany and mineralogy or geology, for practical surveying, and for taking plans and drawings of architecture, machinery and manufacturing apparatus, is to be so regulated and alternated with sedentary studies as to serve the purposes of *physical education*, and promote as far as possible the bodily health and strength of the students.

The Intellectual Education of these students, including what is required for admission to the state seminary, is designed to comprehend—

1st. The accurate orthography, construction, reading, writing and speaking of the English language.

2d. The elements of arithmetic, mercantile arithmetic, penmanship and book-keeping.

3d. Geography, with the science of Chronology and astronomy, especially in their application to rural and civil affairs.

4th. The elements of geometry, algebra and plain trigonometry, with the first principles of architecture, perspective and drawing.

5th. A course of the natural sciences, natural philosophy, chemistry, botany, mineralogy and zoology.

6th. A brief course of belles-lettres and moral philosophy, with some approved treatise on the evidences of Christianity.

7th. A course of ancient and modern history, the elements of political economy, and the constitutions of the general and state governments of these United States.

8th. The principles and practice of the art of teaching.

Of these several studies, it is proposed that correct spelling and reading, writing a fair hand, and the elements of arithmetic, be made requisites for admission into the seminary, and that an impartial examination in these attainments be the ground of selection among rival candidates.

The remaining branches, it is estimated, may be thoroughly taught by the following professors and tutors, in addition to the farmer and gardener, viz :

A principal of the English department with a tutor, who should instruct the students in English grammar, elocution, (including reading and declamation,) composition, rhetoric, logic and moral philosophy ; also in history and biography, political economy, and the constitutions of the general and state governments.

A professor of mathematics, with a tutor, who should teach the elements of geometry, trigonometry and algebra ; geography, with chronology and astronomy, and a mercantile course, including mercantile arithmetic, the usages of commerce, and the natural history, production and manufacture of the various commodities of commerce.

A professor of the natural sciences, to teach natural philosophy, chemistry, botany, mineralogy, and all that pertains to the scientific

principles of the agricultural and other practical labors of the students.

A writing-master, who, in addition to penmanship, should teach drawing, designing and planning, perspective and architecture, with surveying, mapping and related branches.

The Moral and Religious Education of the students beyond what is above stated, to be left on the same footing on which it now stands in the colleges of the state.

Of the Admission of Students, &c.

It is proposed that *one hundred young men* be the number admitted to a state seminary. No student to be admitted under the age of fifteen years, nor to continue in the seminary more than three years, at the public expense.

The whole course of instruction to be so arranged as to be completed in *three years*; but candidates otherwise competent, who, upon examination, shall appear to have made the same attainments with students of the seminary, and in an equal degree, may be admitted to enter one or two years in advance; provided always, that no student shall become entitled to any of the privileges consequent on a regular course, as hereinafter mentioned, who has not spent at least one whole year in the institution.

The thirty-three or thirty-four vacancies which should thus occur annually, it is proposed to fill up by a public examination of candidates offering for the same, held at the several state seminaries, by the faculties of the same, on the first Wednesday in September of each year, in the following manner, viz:—

A list shall be made out by the examining faculty, in which the names of all the candidates shall be arranged in the order of their comparative merit on examination, with the names of the counties from which they come annexed to each; and the election shall be so made as to give the privilege to each county represented among the candidates of filling places in the seminary in due rotation with the others, and in proportion to population, as nearly as may be, and the foremost candidate on the list from the particular county shall be preferred. And when any county fails to be represented among the candidates, the places so failing to be filled shall be given to those candidates from other counties who have not obtained places in the order of the list of merit. And any vacancies occurring during the year, shall be filled up from the list in the same manner. In case of there being three such seminaries in the state, then the counties here intended are to be the counties of such portion of the state as may be assigned by law to the particular seminary.

Students to be liable to a forfeiture of their places and privileges according to the regulations and by-laws of the seminaries.

When any student shall have completed the course of education prescribed, of which the certificates of the several professors for their respective departments shall be the proper evidence, and shall have attained the age of twenty-one years, he shall be entitled to receive a diploma, granted and signed by the Regents of Common Schools, having the force of a license, and authority to teach and en-

joy the several benefits of teaching in any part of the state, under the bounty and patronage of the said Regents.

Of the Government of a State Seminary.

A state seminary to be under the joint government and direction of two boards. One of seven members, denominated the board of managers, appointed with special reference to the management of its fiscal concerns; the other called the board of visitors, of six members, to take more immediate care of its literary interests; to attend examinations; consult with the faculty, and certify to the Regents all matters in regard both to teachers and students, which pertain to their trust.

These two boards to have a mutual veto on each others proceedings, and to act in their joint capacity in electing professors and teachers; in an annual report to the Regents, and in all matters where the interests of their respective trusts are naturally blended together.

The faculty, consisting of the principal of the English department; the professor of mathematics, and the professor of natural sciences, with the aid of the board of visitors in special cases, shall have the entire government and control of the students, according to the by-laws and regulations of the seminary. These by-laws and regulations, to be prescribed by authority of the Regents, and to be the same in all the seminaries of the state.

The faculty shall convene and sit from time to time, for its proper business, and choose its own president, who shall hold office for a specified time, according to the by-laws.

The members of the two boards of managers and visitors shall be appointed, and vacancies occurring in these bodies, shall be filled by the Regents of common schools; and it shall be the duty of these boards to elect, and by the consent of the Regents to appoint all professors and principal teachers in the state seminaries, or to remove the same, in case that should become expedient.

The principal teachers or professors in each department, shall appoint their own tutors, and be responsible for the department of duty assigned to them, as for their own.

Thus far the plan submitted, has reference merely to the supply of a competent number of well qualified teachers, to have one for each town in the state. The qualifications aimed at, and it is hoped secured by such a course of instruction and discipline, are, 1st, appropriate; 2d, they comprehend the desirable additions to our common school instruction, and lastly, they are not such as will afford any peculiar facility for going into other professions, or frustrating the hopes of the state, in educating them for professional school-masters. Three state seminaries, with a three years course, will furnish one hundred such teachers per annum, after the third year from their establishment. And in the course of ten years, which is probably as early as all the towns in the state would be prepared to fulfil the conditions of employing them, hereafter mentioned, the number prepared would, making due allowance for unavoidable failure in some, equal the number of towns in the state, probably then about *nine hundred*.

It remains to shew, in what way the benefits of thorough and good instruction may be (to use the words of the Secretary of State, in his late report,) "*brought home to the districts, and addressed to the understandings of the inhabitants thereof*," and how "the minds of those who patronize and control the operations of the school districts, must be awakened, interested and convinced," a result essential to the necessary compensation and perpetuity of good teaching and experienced professional teachers. This is proposed to be effected by the establishment of central town schools.

III. Of the Town Central Schools.

Let it be provided, that whenever any town in the state shall have erected a specified building, affording a school and lecture room, with proper appendages, besides suitable dwelling apartments for a teacher and family, and shall have connected with the same a garden of specified dimensions, and expended a specified sum for a chemical and philosophical apparatus, and shall have employed a teacher who is a graduate from a state seminary, then said town shall be entitled to draw from the state treasury, the sum of *two hundred and fifty dollars*, for each year of the employment of such teacher, provided that in no case the sum so drawn shall exceed the one half of the yearly compensation of such teacher exclusive of the dwelling apartments and garden, which he is to occupy gratuitously.

The duties of the teacher of a town central school, are arranged with a view to the following objects, viz :

1st. To diffuse a knowledge of what he himself has acquired at the state seminary, among the several district schools of the town, and to train teachers for the same.

2d. To secure efficiency, judgment and experience to the discharge of the duty of inspecting common schools, as now provided for by law.

3d. To introduce both the adult inhabitants, and the youth of the several districts to the peculiar advantages of the age, especially in the application of science to the purposes of practical life, by evening and other lectures ; and

4th. To constitute a regular and systematic channel, by which the continual and successive improvements that are making in the world in education, in school books and books for popular education, and in arts and sciences, may freely and quickly circulate through every vein of the state.

To accomplish these views, the following arrangement is proposed :

That the town teacher instruct in the town central school, twenty-six students, one half male and the other female, during the summer term of the year, or from the 15th day of April till the 15th day of October, except a vacation, say from the 3d till the 24th day of July.

These pupils to be instructed in all the branches of the intellectual department, and the principles of the practical department, as they are taught in the state seminary.

During the winter term, or from the 15th day of October till the 15th day of April, the said town teacher to spend his whole time, Sundays and Saturday afternoons excepted, in visiting by regular succession and in equal proportion, the several district schools in the town.

On these visits he shall deliver plain and practical instructions in the school, especially on those additional topics of instruction not formerly included in the common school course—he shall occasionally deliver lectures, such as do not require much apparatus to illustrate, and he shall make generally known useful books, and read and explain books of the character of the Library of Useful Knowledge, and at suitable times examine the pupils on what they have acquired.

On three evenings in the week this teacher shall also, during the winter term, deliver lectures on chemistry, natural philosophy and agriculture, and the principles generally of the useful arts, illustrated where necessary, by experiments—this at the lecture room of the central school—and one evening in the week he shall devote to the instruction of a class of young persons in declamation, composition and extemporaneous debating.

This teacher shall also be ex-officio inspector of common schools in said town, and shall have an equal vote with the other inspectors in the examining and admitting of teachers, and in all the duties by law appertaining to inspectors of common schools.

And during the term of his teaching at the central school, he shall devote the forenoon of each Saturday to visit, as inspector, in company with at least one of the other inspectors of the common schools of said town, all the common schools in succession, devoting not less than half a day to each visit, and repeating the same as often as the case admits.

These visits to be conducted as examinations of the district schools.

There shall be besides an examination at the central school-house at or near the close of the winter term, of pupils selected by the respective district teachers, as samples of their several schools; and suitable rewards shall be distributed at the expense of the town school, to those who excel. This examination to be conducted by the town teacher and the inspectors.

The twenty-six pupils instructed at the central school to enjoy that benefit gratuitously, and to be furnished proportionably from all the districts in the town which choose to avail themselves of this instruction.

It may be left at the option of the trustees of the central school, with the consent of the town teacher, whether the addition of an entire female department, with an increased number of pupils and a charge equal to the increased expense, might not be desirable: as also whether the school-room of the central school might not be occupied by an assistant teacher during the winter term, with such arrangements for compensation by the pupils then taught, as should cover the expense.

In this manner it is believed that a very great improvement of the character and usefulness of the common schools in a whole town

would be realized immediately on such town teacher merely entering upon his labors, while, in the progress of his labors a sufficiently large number of persons of both sexes would soon be qualified for filling the district schools in a highly respectable manner, and in all cases the presence and supervision of this qualified person would essentially benefit the districts.

It is also believed that the situation of such central teacher, combining as it would an office of high trust and respectability with a comfortable residence, and a salary of five or six hundred dollars per annum, will invite and retain in the profession men of equal talents, on an average, with those who fill the several learned professions in our country. And although the smallness of compensation in the district schools may render the office of a teacher in them fluctuating for many years to come, yet the permanency of their common guardian, the central teacher, will greatly remedy that evil. But, in the progressive operation of this system, it must happen that, so many being thus qualified for teaching, a sufficient number will find inducement from local convenience and otherwise to take charge of the less lucrative district schools in a more permanent way ; while it is fairly to be presumed, that the increased usefulness of the profession to every interest of young and old in the community, will, by the time that all the towns are supplied from the state seminaries, secure a sufficiently high estimate and compensation for teaching as to give permanent employment to students from the seminaries in district schools.

The reason for that feature in the plan which provides that half the pupils of the town school shall be females, is this : From the character and condition of our country, both in regard to the occupations assigned by public opinion to the female sex, being fewer than in other countries, and the inviting field of enterprise that draws away the talents and enterprise of the other sex from such a profession as teaching now is, it has come to be a fact, and must be so for many years to come, that a very large proportion of the district teachers, especially in summer, are females. It is but justice to them and to the interests of education, to afford them the means of a good preparation for this duty. Besides, by this arrangement we have a double security for the ultimate supply of a competent number of well qualified teachers, even if the district schools should fail to compensate men of talents for many years to come. There is no reason to doubt that females properly educated possess all the essential qualifications for good teachers in as high a degree as men, and, in the circumstances of our community, they hold out some peculiar advantages. Their attainments and qualifications, however elevated, will always be available to the public at moderate prices, not being exposed to the competition of the various profitable employments that invite and enhance the services of men. Finally, when well qualified female teachers are necessarily withdrawn from this field of labor, their services in the cause of education are far from being lost to the community, they are but transferred from the district to the domestic school ; the fundamental, and perhaps the most efficient instrument for securing this great department of the public weal.

IV. *Of School Books, &c.*

It is proposed to remedy the evils, and further to promote the improvement of school books, in the following manner, viz :

Let the several professors of the several state seminaries hold an annual convention at the most central one, for the purpose of comparing and discussing their respective views and experience in regard to school books, methods of teaching particular subjects, and such projects of improvement in education as merit consideration ; and after coming to a conclusion, let them report the several results to which they have come, with the reasons of the same, to the Regents of Common Schools. Such part of the said report as the Regents deem proper, to be published with their annual report to the legislature.

Let it further be the duty of the Regents to procure the publication of such improved school books as are thus recommended by the united wisdom and experience of the faculties, in large editions, on good paper and in substantial binding, for the supply of all the common schools of the state.

The great extent of such editions will in all cases enable the Regents, after securing the copy right where such exists, to furnish good and cheap school books to every child in the state.

The authority of the Regents in this department should of course go no further than to recommend such books on the ground of their merit, not to prohibit the use of any, nor otherwise discourage a salutary competition among the writers and publishers of school books. On the contrary, every inducement should be held out, and even premiums for the supplying of acknowledged desiderata in the school books, or translating from other languages, or importing or writing improved books, the merit of the improvement to be subject in all cases to the judgment of the aforesaid convention of the faculties. And as often as in the judgment of said convention the best interests of education required that a particular school book should be changed and superceded by another, the duty of the Regents would be in a manner equitable to the proprietor (if any) to protect the cause of common schools against all speculation at the expense of this sacred public interest.

A similar benefit would arise to the cause of education by the adjudication of the convention of the faculties in regard to the various and novel projects for rapid or improved instruction that are constantly preferring their claims to public patronage, and in some instances operating with all the effects of a mischievous deception on the credulous and inexperienced guardians of the young. It is to be presumed that the judgment of such a body would have much influence, and would wisely discriminate, so as to advance and promote every such scheme of real merit, and to protect the public from such as are unworthy of encouragement.

V. *Of the Government and General Superintendence of the whole.*

It is proposed that the general superintendence of the common school system, which is now made the duty of the Secretary of State, be committed to a board of our most intelligent citizens, con-

sisting of nine members, to be appointed in like manner as the board of Regents of the University are, and with like powers and duties, to be denominated the board of Regents of Common Schools. And that, in addition to the funds already appropriated by the constitution and laws, such additional funds be created by law, for the further improvement of common schools, as shall provide for the erection and endowment of *three state seminaries*, as above described; and also for an additional appropriation of \$250 to each town in the state complying with the conditions above stated: and that the appropriation of these *additional funds*, according to the law in this case to be provided, and the execution of the whole plan of improvement, be placed in the hands of said board of Regents of Common Schools.

Estimates.

The expense to the state of carrying the above plan into effect, it is obvious cannot be estimated with absolute precision; nor would the same estimate for the seminaries be applicable to different parts of the state, where land and building materials as well as the expenses of subsistence are so various. The following, however, is a probable statement of the average of the appropriations necessary to be made by the Legislature, to carry the above system into complete operation during the period of thirteen years, when it shall have been completed, and of the current expenses after that period:

1st year—	cost of three seminaries and appurtenances,	\$129,000
2d “	expense of conducting three seminaries,...	40,000
3d “	do do do . . .	40,000
4th “	do do do . . .	40,000
5th “	do do do \$40,000	
6th “	half salaries of 100 teachers, \$250,	25,000
		65,000
6th “	expenses, conducting 3 seminaries, \$40,000	
“ “	half salaries of 200 teachers,.....	50,000
		90,000
7th “	expenses of three seminaries,....	\$40,000
“ “	half salaries of 300 teachers,.....	75,000
		115,000
8th “	expenses of three seminaries,....	\$40,000
“ “	half salaries of 400 teachers,.....	100,000
		140,000
9th “	expenses of three seminaries,....	\$40,000
“ “	half salaries of 500 teachers,.....	125,000
		165,000
10th “	expenses of three seminaries,....	\$40,000
“ “	half salaries of 600 teachers,.....	150,000
		190,000
11th “	expenses of three seminaries,....	\$40,000
“ “	half salaries of 700 teachers,.....	175,000
		215,000
	Carried forward,.....	\$

Brought forward,.....		\$
12th year, expenses of three seminaries,....	\$40,000	
" " half salaries of 800 teachers,.....	200,000	
		240,000
13th " expenses of three seminaries,....	\$40,000	
" " half salaries of 900 teachers,.....	225,000	
		265,000
Total expenditure in 13 years, exclusive of interest, and supposing an increase to 900 towns,.....		\$1,734,000
Being an average annual expense of		\$133,384
After the expiration of these 13 years, and on the sup- position of 900 towns, all embracing the advantages of the system, the annual expense of sustaining three seminaries and paying one-half the salaries of 900 teachers, will be.....		<u>\$265,000</u>

Particulars.

The above estimate for seminaries and appurtenances, is made up as follows, viz:

Seminary buildings, including lodging and recitation rooms	\$20,000
Two professor's houses,	5,000
House for commons, &c.	3,000
Farm, with farm buildings and appurtenances,.....	12,000
Library and apparatus,	3,000
Total for one seminary,.....	<u>\$43,000</u>
And for three, as above,.....	<u>\$129,000</u>

Annuities.

Salary of the principal of the English department, exclu- sive of the use of house, \$1,000—tutor, \$400,	\$1,400
Salary of professor of mathematics, with house, \$1,000— and tutor, \$400,	1,400
Salary of professor of the natural sciences, to provide ma- terials in all,	1,200
Writing-master, &c.....	800
Gardener, who is also a mechanic,	365
Contingencies,	168
	<u>\$5,333</u>
Board of trustees,	8,000
Total annual expense,	<u>\$13,333</u>
And for three seminaries, as above,.....	<u>\$40,000</u>

It is estimated that the farm, by the labor of the students, will compensate the farmer for his time and supply some deficiencies in the above low estimates for board and contingent expenses, or aid in improving and repairing or increasing the library and apparatus.

JOSEPH PENNEY,
O. C. COMSTOCK,
MATTHEW BROWN, jun.
LEVI WARD, jun.
HEMAN NORTON.

Committee in behalf of the citizens of Rochester.
Rochester, 20th March, 1830.

IN SENATE,

April 5, 1830.

REPORT

Of the Committee on the Judiciary, in relation to
to the passage of a law exempting the surviving
Officers and Soldiers of the Revolution from im-
prisonment for debt.

Mr. Benton, from the Committee on the Judiciary, to which was
referred several memorials from sundry inhabitants of the city of
New-York, in behalf of the surviving officers and soldiers of the
revolutionary army, praying for the passage of a law exempting
them from imprisonment for debt,

REPORTED AS FOLLOWS, TO WIT:

That the petitioners represent, that instances have actually occur-
red in which some of the "small surviving remnant of these revolu-
tionary patriots" have been imprisoned for debt, under circumstances
no doubt painful and distressing, but which could not be avoided so
long as this coercive mean is allowed a creditor to compel his debtor
to yield up a part, if not all, of a small pittance, intended as a relief
and support to an indigent, decreped and worthy citizen, whose youth
and vigour had been spent in public service, and whose life had oft
been periled on the battle field.

It will be remembered, that the Congress of the United States,
some years since, made ample provision for the support of those who
had risked so much and served so well in the cause of liberty
and humanity. Keeping in view the object of this grant, it was the
wish of the committee to limit their inquiries to the simple fact,
whether, by the existing laws of this state, that object might not be
wholly frustrated, and thereby the benevolent intentions of the go-

vernment defeated. We are not aware that it is necessary for any one of the recipients of this bounty to engage in the ordinary business avocations of life, in order to support and sustain himself. The right and interest of a pensioner can neither be sold, attached or assigned, which is well known to all who may choose to deal with or give credit to him. As far as Congress had the right and the power to exercise it, so far have they extended the provisions of their enactment to render this subject wholly personal. It becomes then a matter of grave consideration, whether the state authorities will not lend an helping hand in this great and good work of charity and benevolence. But so long as imprisonment is allowed by the laws of this state, these representatives, to us, of a band of great, good, and patriotic fathers, will be indulged in credits in anticipation, and it would be strange indeed if, in many instances, debts should not be incurred for what was not necessary for the comfort and convenience of the debtor. In such cases, is not the credit given more upon the strength of the pension than the ability to pay without it? If this be so, then, by allowing these veterans to be imprisoned, we, in effect, counteract the salutary operations of the restrictions interposed by Congress, to prevent the sale or pledge of the pension and money half-yearly due thereon.

If it were proper at this time to give free scope to those feelings of the heart which the occasion offers, the committee believe an appeal would not be made in vain. But is it necessary? Let equal and exact justice be awarded to all; and this application to us will not be disregarded or rejected. It is the dictate of justice seconding the voice of humanity, urging upon us the necessity and propriety of an act which will in a measure smooth the rugged but short path which yet remains to those we love, honor and venerate.

If we exempt from imprisonment these soldiers of the revolution, we do not materially affect the established laws for the protection of trade and business, and to enforce the collection of debts; we are only extending to them that guardian care and protection, which their wants, habits and infirmities imperiously demand of us.

The committee herewith submit a bill responsive to the prayer of the petition, confined in its provisions to the single case of a pensioner over the age of seventy years.

IN SENATE,

April 6, 1830.

REPORT

**Of the Committee on Claims, to which was referred
the Petition of Gilbert A. Gamage.**

Mr. Hubbard, from the Committee on Claims, to which was referred the Petition of Gilbert A. Gamage,

REPORTED AS FOLLOWS, TO WIT:

That the petitioner is the lawful owner of a claim against the state by James M'Lean, late a captain in the service of this state, as will appear by documents herewith submitted. This claim is for three months pay, at fifty dollars per month, charged by the said M'Lean, from the 25th of April, 1817, to the 25th of July, of the same year. The vouchers have been furnished to the committee, together with the assignments, and are submitted for the inspection of the Senate.

Captain M'Lean was appointed, under a law of this state passed in 1812, commandant of the guard stationed at the Narrows for the protection of the fortifications and other public works at that place, and continued to draw his pay up to the 25th of April, 1817, at which time the present account is dated. This charge for three months services has never been satisfied. The committee are of opinion, that he was entitled to his pay up to the time of his discharge, and that the petitioner has the full right to receive the amount. It will be observed, that he was discharged by Gov. Clinton, on the 14th of July, 1817, and that his account was made out up to the 25th of that month. This leaves a deficiency of service of eleven days: But, as the letter was dated at Albany, it was probably not received before the 25th.

The committee, under all these circumstances, are of opinion, that the state justly owes the debt, and have instructed their chairman to introduce a bill for its liquidation.

IN ASSEMBLY,

March 31, 1830.

REPORT

Of the Select Committee, on the petition of the trustees of the First Methodist Episcopal church in the town of Parma.

Mr. Randall, from the select committee to which was referred the petition of the trustees of the First Methodist Episcopal church in the town of Parma,

REPORTED—

The petitioners represent that they are the trustees of a religious society in the town of Parma. That they and others were members of a religious society, and pursuant to due notice, on the 29th day of January, 1827, convened, organized and elected five trustees of the said society, pursuant to the directions of the third section of the act to provide for the incorporation of religious societies, passed April 3d, 1813. That a certificate of the said election, under the hands and seals of the persons presiding at such meeting, was made, setting forth that the members of the said meeting had resolved that the trustee so appointed, and their successors, should be a body corporate, under the name and title of the First Society of the Methodist church in the town of Parma. That the said certificate was acknowledged before a commissioner of deeds and recorded in the office of the clerk of the county of Monroe; and that the said trustees have purchased a site, taken a deed for the same in their corporate name, and erected a meeting-house thereon for the use of the said society.

And the petitioners also represent, that on taking legal counsel to enforce the subscriptions toward erecting the said meeting-house, they were advised that the said certificate of incorporation ought to have been acknowledged before the chancellor or one of the judges of the supreme court, or of the court of common pleas of the county of Monroe, in order duly to constitute them a body corporate. And that the payment of the subscription was resisted, and a recovery defeated, on the ground that the said trustees were not a body corporate, by reason of the defect in the said acknowledgment.

And your committee are of the opinion, that inasmuch as the said trustees have expended large sums of money in the purchase of the land and the erection of the said meeting-house, and that many of the sums subscribed for that purpose still remain unpaid, a law ought to be passed in such manner as that the incorporation of the said society, from the time of recording the aforesaid certificate, and all the lawful acts of the said trustees as a body corporate, may be confirmed, and that they may be a body corporate under the aforesaid name and title. Your committee, therefore, ask leave to introduce a bill for that purpose.

IN ASSEMBLY,

March 31, 1830.

REPORT

Of the Committee on the Judiciary, on the petition
of the Benevolent Society of New-York.

Mr. Stephens, from the committee on the judiciary, to which was
referred the petition of the Benevolent society of New-York,

REPORTED—

That the society represent that they have had a number of law-suits, and have suffered inconvenience in not being allowed by the rules of evidence to introduce a member of the society as a witness in its behalf. They ask a law to be passed to admit members of the society to be witnesses in suits where they are a party.

Your committee have no doubt that this society, or any other incorporation, and even individuals, would find it convenient, at times, to be witnesses in their own suits : but your committee are of opinion, that the prayer of the petitioners cannot be granted without violating the plainest principles of our jurisprudence ; principles too elementary to need illustration, and too intimately connected with the moral condition of our institutions ever to be violated.

Your committee have, therefore instructed their chairman to ask leave to introduce the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 6, 1830.

REPORT

Of the Attorney-General, to whom was referred by the Assembly the Bill, entitled "An act to divide the town of Huntington, in the county of Suffolk."

The Attorney-General, to whom was referred by the Assembly, the bill, entitled "An act to divide the town of Huntington, in the county of Suffolk," with instructions to report "whether, in his opinion, the charter of the said town will in any manner affect the question as to its division,"

RESPECTFULLY REPORTS :

That the first patent or charter relating to the town of Huntington which he has been able to find among the records in the office of the Secretary of state, was granted by Governor Nichols, on the 30th day of November, 1666. By this patent, Governor Nichols, after reciting that there was a town within the government, called and known by the name of Huntington, on Long-Island, then in the occupation of several freeholders and inhabitants there residing, who, having theretofore made lawful purchase of the lands thereunto belonging, had improved and settled a part thereof, did ratify, confirm and grant unto Jonas Wood and seven others, (therein named,) "in behalf of themselves and their associates, the freeholders and inhabitants of the said town, their heirs, successors and assigns," all the lands that already had been, or thereafter should be purchased for and on behalf of the said town, whether from the native proprietors or others, within the limits and bounds specified in the patent; and also granted unto the said Jonas Wood and others, and their associates, their heirs, successors and assigns, all the privileges belonging to a town, within the government, which should continue and retain the name of Huntington.

As this purports to be the confirmation of a previous grant, and bears date but little more than two years after the surrender of New-York by the Dutch, it is probable that the original grant was made by that government.

On the second day of August, 1688, a new patent or charter of confirmation was granted by Governor Dongan, to Thomas Fleet and eight others; which in most respects was like the one after mentioned.

By a patent or charter bearing date the 5th day of October, 1694, Governor Fletcher, after reciting the patent of 1666, and an application of Joseph Bayly and others for a confirmation of the premises, and that the freeholders and inhabitants of the town might be made a body politic and corporate, did give, grant, ratify and confirm unto "Joseph Bayly and six others, (therein named,) freeholders and inhabitants of the said town of Huntington, hereby erected and made one body politic and corporate, and willed and determined to be called by the name of the trustees of the freeholders and commonalty of our said town of Huntington, and their successors," all the aforesaid lands, &c: to have and to hold the same unto the said Joseph Bayly and others, trustees of the freeholders and commonalty of the said town of Huntington, and their successors forever, with the license of purchasing from the natives any lands or meadows within the limits and bounds of the town, to and for the several and respective uses following, and no other: that is to say, such parcels as had been taken up and appropriated to any of the freeholders and inhabitants of the town, to the uses of such person or persons in fee; and the remainder, or those parts not taken up or appropriated to any particular person or persons, "to the use and behoof of the present freeholders and inhabitants, their heirs, successors and assigns forever, in proportion to their several and respective settlements, divisions and allotments, as tenants in common, without any manner of let, hindrance or molestation, to be had or reserved upon pretence of joint tenancy or survivorship." It was further granted, that "the said freeholders and inhabitants, the freemen" of the said town, their heirs and successors for ever, should be a body corporate and politic, in deed and name, by the name of "the trustees of the freeholders and commonalty of the town of Huntington;" and by that name they should have perpetual succession, with power to hold the lands granted and other lands, and goods and other things, to alien or sell the same—to sue and be sued, and to have a common seal: And the charter directed that seven trustees, a town clerk,

one constable and two assessors should be elected annually on the first Tuesday in May, by a majority of votes of the freeholders and freemen of the town. This charter altered the bounds of the town, and, as the Attorney-General is informed, greatly reduced its limits.

The towns in this state have always been corporations for certain purposes, and have held their lands and other property in a corporate capacity. This doctrine has been fully settled by the unanimous judgment of the highest court in the state, and has since been recognized by the Legislature in the Revised Statutes. But the power to divide towns, including those which hold lands and other property in their corporate capacity, has, it is believed, never been doubted or questioned. The privileges granted to the freeholders and inhabitants of the town of Huntington by their charter, are of the same nature and description as those enjoyed by the inhabitants of other towns; and whether a right be given by express words, or arises by necessary implication, cannot be material. The authority of the Legislature to divide towns, depends upon a distinction between private and public corporations; the one being created for private, and the other for public purposes. The individuals of which a private corporation aggregate is composed, have vested rights of property, such as are private or individual in their nature, and in which the public has no direct interest: And these rights and privileges cannot be taken away, except in the regular course of judicial proceedings, without a violation of the first principles of justice. But public corporations, such as towns, are created for the purposes of public government; they are political institutions, and subject to the control of the Legislature. No freeholder or inhabitant of a town has any vested right of property in its funds. He has no interest in the corporate property that can be aliened to another;—none that will pass to his heir or executor by right of representation—none that will adhere even to himself, any longer than he remains within certain defined limits. It is the same description of interest in the public property of a town, that every citizen has in the public buildings of a county, or the funds and property of the state in which he resides; an interest which he has only as a member of the community, and not of private right.

Those who remonstrate against a division, say that the charter is a supreme law, and cannot be altered without an amendment of the constitution of the state. It is supposed that they rely on the fourteenth section of the seventh article of the amended constitution.

That section, so far as it relates to grants or charters made by or under the authority of the king of Great Britain, is (with an immaterial change in the phraseology) a transcript of the thirty-sixth article of the constitution of 1777. Just before that period, this country had declared a separation from Great Britain; and although in modern times it is a well established principle, that the division of an empire creates no forfeiture of previously vested rights of property, it was deemed wise and politic to adopt this just and equitable rule into the written law, and make it a part of the fundamental principles of the new government. It was in effect a declaration that the former government, while it had been submitted to, was a lawful government, and that the rights and privileges which had been acquired by individuals and corporations under its grants and charters, were not to be prejudiced or destroyed by the revolution. It was not a provision that those rights and privileges should acquire any new force or sanction, but simply that they should not be affected by the change in the government. In the new constitution adopted in 1821, this provision was retained; and, from abundant caution, it was added, that nothing therein contained should affect any grants or charters made by or under authority of the state, since the revolution, or impair the obligation of debts, or any other rights of property. It is quite clear that this did not give any new sanction or validity either to grants, charters, debts or other rights of property previously acquired; but only declared that they should not be affected by the adoption of a new constitution.

The bill directs a just and equitable partition of the property of the town: and with such a provision, the Attorney-General is of opinion, that the question of dividing it is one of expediency and not of power.

Respectfully submitted.

GREENE C. BRONSON,
Attorney-General.

April 5, 1830.

IN ASSEMBLY,

April 7, 1830.

REPORT

Of the Committee on the Militia and Public Defence,
to whom was referred the petition of James Mc-
Mahan.

The committee on the militia and public defence, to whom was referred the petition of James McMahan, praying to be reimbursed for certain advances made, and to be paid for services performed during the late war,

REPORT—

That on a careful examination of the petition and the accompanying documents, it appears to your committee, that James McMahan, commanded a company of *militia*, in the regiment commanded by lieut. colonel John McMahan; that in pursuance of orders issued by major-general Stephen Van Renselaer, then commander-in-chief on that station, he, James McMahan, was ordered by his commanding officer, to take command of his company, and station them at *Portland Harbor*, in the county of Chautauque; that he did immediately enter upon the duty assigned him, and continued in such service, for the term of two weeks.

It further appears, that at that time there was no commissary or public stores in the vicinity of the station, and the said James McMahan did, at his own expense, furnish himself, his officers and men, with subsistence, during the time of their service, which was from the 2d to the 17th of July, 1812.

It further appears to your committee, that the said James McMahan was in the month of September of the same year, by the same authority, ordered into service, at the same post, and that he continued in such service one month, to wit : from the 3d day of September, to the 2d day of October of that year.

It also further appears, that captain McMahan has never received any compensation for services rendered, or for advances made for the comfort of his troops. This appears from the affidavit of the commanding officer, under whose orders he rendered the service, as also by his own affidavit, appended to his account rendered, which is in the words and figures following :

State of New-York,

In account with James M'Mahan, Dr.

To services as captain and commandant of a company of militia, detached from the regiment commanded by Col. John M'Mahan, and stationed at Portland Harbor, in the county of Chautauque, from the 2d to the 17th July, 1812, at \$40 per month,...	\$20 00
To 2 rations per day, 15 days, at 15 cents per ration,.....	4 50
To rations for 52 men for 15 days, at 15 cts.,.....	117 00
	<hr/>
	\$141 50
Interest from August 1st, 1812, to 23d February, 1830,..	174 15
	<hr/>
	<u>\$315 65</u>

To services on the same duty at the same post from the 3d day of September to the 2d day of October, 1812,	40 00
To my own rations, 2 per day for 30 days, at 15 cents,..	9 00
To cash paid for powder and lead,	9 50
To cash paid Amos Atwater for 2000 feet boards for barracks,.....	10 00
To cash paid Hugh Whitehill for carting do.,	4 00
To cash paid James Atkins to Lewiston and back, to obtain an order for the disbanding the company,.....	10 00
	<hr/>
	\$82 50
Interest from October 2d, 1812, to 23d February, 1830,..	100 42
Brought down,.....	315 65

Whole amount, \$498 57

Chautauque County, ss.

I, James M'Mahan, do swear, that the above is a true account of monies advanced and services rendered by me in the late war, and that I have not received payment for the same, or any part thereof.

JAMES M'MAHAN.

Sworn before me, February 24th, 1830.

JACOB HOUGHTON,

Commissioner, &c.

Of this account your committee feel authorised to recommend the allowing (with some modification) the following items—

Service from the 2d to the 17th of July, $\frac{1}{2}$ month, at \$40	
per month,	\$20 00
Two rations per day for 15 days, 30 rations, at 15 cents	
per ration,	4 50
Rations for 50 men for 15 days each, 750 rations at 15 cts.	112 50
Service from September 3d to October 2d, 1 month.....	40 00
Two rations per day for 30 days, 60 rations, at 15 cts.,...	9 00
	<hr/>
	\$186 00
Interest from the year 1822, in which the claimant made	
his first application for remuneration, 8 years,	104 16
	<hr/>
	\$290 16
	<hr/> <hr/>

Your committee have prepared a bill in conformity with the above view of the subject, and directed their chairman to ask leave to introduce it to the house.

S. STEWART.

April 7.

IN SENATE,

April 8, 1830.

REPORT

Of the select committee, to whom was referred the petitions of sundry inhabitants of the counties of Suffolk and Queens, and also of the city of New-York.

Mr. Conklin, from the select committee, consisting of the Senators from the first district, to whom was referred eight several petitions of sundry inhabitants of the counties of Suffolk and Queens, and also of the city of New-York, praying for a repeal of so much of the Revised Statutes, as prohibits the hunting of deer with hounds and beagles, in the said county of Suffolk, and to whom were also referred two several remonstrances from sundry other inhabitants of the county of Suffolk, against the prayer of the petitioners,

REPORTED AS FOLLOWS, TO WIT :

That it is set forth in the said petitions submitted to them, that by the fourth section of the act to prevent the destruction of deer, passed February 25th, 1813, it was provided, that if any person or persons shall, at any time hunt or pursue any wild buck, doe or fawn, or other deer, with any hound or beagle, every such person shall for every such offence, forfeit \$12 50. That on the 10th day of March, 1820, an act was passed on a petition very generally signed by the inhabitants of the said county of Suffolk, repealing the said fourth section of the above mentioned act, so far as it affected the said county. That by section 5th, title 16th, chapter 20th of the first part of the Revised Statutes, the provisions of the 4th section of the above mentioned act were re-enacted, without except-

ing from its operation the said county of Suffolk, probably from the fact, that the attention of the revisers were not called to the act of the 10th March, 1820; and it is further represented, that by prohibiting hunters from pursuing deer with hounds, the number of those who pursue the practice of still hunting, will be increased, and that the pursuit of game by this class of people, is detrimental to themselves and injurious to the community. They can ill afford to spare the time spent in hunting, and the practice leads them into loose habits, frequently destructive of their moral character. That unfortunately, many and perhaps the larger portion of this class, are men devoid of correct principles, and who pursue their sport without much regard to the interests or property of their fellow citizens.

That there is generally a considerable quantity of shrub oaks and under-brush in the woods frequented by the deer in the said county, which prevents their being seen at a distance. That to remove this difficulty the still hunters have often set fire to the woods, and thereby occasioned great damage.

After the passage of the act of 1813, and previous to its repeal as it related to Suffolk county, in 1820, these fires were very frequent. Since that period, the practice of lying in wait for deer, or still hunting, has diminished, and fires have occurred much less frequently.

Still hunters often pursue their sports in the night, and thereby endanger the lives of each other and of travellers. In dark nights it is very difficult to distinguish the deer from horses and cattle, and the latter frequently fall a prey to the mistakes of the still hunters. It is further represented, that since the introduction of hounds into the said county, a less number of deer have been killed. It is generally a conceded fact, that the still hunting method is more destructive to deer than that which is pursued with hounds.

The only argument advanced by those who have remonstrated against the prayer of the petitioners is the alleged probability that the introduction of hounds into the county will be detrimental to sheep. On the other hand, however, it is represented that the propagation of hounds will be the means of diminishing the number of foxes, and consequently enhance the preservation of sheep.

In view of the foregoing facts and statements, it appears that if the restrictions against hunting with hounds should be continued,

it would seriously endanger the woodlands and jeopardize the lives of the domestic animals in that part of the said county where the hunting grounds are situated. These woodlands have much increased in value since the said repeal in 1820, in consequence of their not having been injured by fires. The committee, therefore, are of the opinion that the prayer of the petitioners ought to be granted. They have prepared a bill for that purpose, and directed their chairman to ask for leave to bring in the same.

IN SENATE,

April 9, 1830.

REPORT

**Of the Committee on Claims, to which was referred
the petition of Nathan Underwood.**

Mr. Hubbard, from the committee on claims, to which was referred the petition of Nathan Underwood,

REPORTED AS FOLLOWS, TO WIT:

That the petitioner for several years, has sought legislative relief, and has obtained several reports highly favorable to his application.

At the last session of the Legislature, an act passed the Assembly, almost unanimously in his favor, but failed towards the close of the session, in the Senate, by a vote of 17 in his favor, and 8 against the bill then under consideration.

The complaint on his part, seems to be, that many years ago he and others whom he represents, purchased in good faith, lot No. 64 in Free-Masons patent, in Litchfield, Herkimer county, then in a state of nature; that in the first place, they purchased of Eli Brown, and paid him one dollar per acre, about 39 years ago; his title failing, they afterwards purchased of Henry Platner, at \$4 per acre, and paid him the full amount about 36 or 37 years ago.

After purchasing of Platner, and before he was fully paid, it was rumored that his title was defective, and that the state had a claim in consequence of the attainder of John Wetherhead.

The petitioner and other occupants, then petitioned the Legislature to assert their claim, if they had any. A reference was made to the Attorney-General, who reported that it was not expedient to

[No. 395.]

pay off an old mortgage, executed by John Wetherhead, and the petitioner and others then compromised with John Thurman, the assignee of said old mortgage, and paid him one dollar per acre, and they understood that lot No. 64 was fully discharged therefrom.

The state afterwards purchased in the mortgage held by Thurman and enforced their claim against the lot, and in 1804, after a discovery had been filed of the lot as forfeited to the state the lands were appraised at \$7 per acre.

Several laws were afterwards passed in relation to the lot, and in 1817, the interest having been remitted, Abraham Varick, Esq. of Utica, and Lewis B. Rider, took conveyances from the state, by consent of the petitioner, upon an understanding, that if any thing should thereafter be remitted by the state, it should be for the benefit of said Nathan Underwood.

The petitioner asserts that he was induced to consent to Mr. Varick's purchasing from the state, because he, the petitioner, was in embarrassed circumstances and unable to litigate with the state; and from an expectation that the state would make some deduction, either by remitting interest from time to time, or by deducting part of the appraisement; and he alleges that the committee on claims then in the Senate advised him to this course.

The facts in relation to this claim will more particularly appear by referring to a report made by the Attorney-General February 10th, 1826, and a report made by Mr. Monell, chairman of the committee on claims in the Assembly, March 13th, 1826, also from the reports made at the last session, as will appear from the journals.

The petitioner contends that by the payment to John Thurman of the amount claimed by him, the said old mortgage was in effect discharged, so far as said lot No. 64 was concerned, or that said payment operated as an assignment in equity of said mortgage for the benefit of the persons paying the money.

He produces the affidavit of Ebenezer Cole, who was present when the settlement with Thurman took place; and Mr. Cole swears expressly, that it was agreed and understood that the mortgage was to enure to the benefit of those who paid the money.

It is complained that the state by purchasing the mortgage thwarted that understanding, and that the lands when appraised at seven dollars per acre were appraised entirely too high, and that such appraisal included the increased value of the lands from the improvements made by the petitioner.

The petitioner has furnished two affidavits, one made by Ebenezer Cole, the other by Ebenezer Goodell, both of whom your committee believe are highly respectable, and who swear that they have been intimately acquainted with said lot for many years, and were well acquainted with it when it was appraised, and they estimate the value at three dollars and fifty cents per acre, exclusive of improvements.

From these affidavits your committee have no doubt the land was appraised much too high; and as the debt due from Mr. Varick is perfectly good for the seven dollars per acre, your committee are unanimously of opinion that the petitioner is entitled to relief, and that he has a fair claim against the state for the value of his improvements, at three dollars and fifty cents per acre besides interest.

As the state has received part and holds the bond and mortgage for the residue, your committee recommend that the petitioner be paid three dollars and fifty cents per acre on 342 acres, making \$1,197, with interest on that sum at the rate of 6 per cent, from the 27th day of December, 1817, from which time Mr. Varick pays interest on seven dollars per acre to the state.

Your committee have prepared a bill which they herewith introduce, and recommend that it become a law.

IN SENATE,

April 9, 1830.

REPORT

Of the Commissioners of the Land-Office, on the
petition of William Stevenson.

The Commissioners of the Land-Office, on the petition of William Stevenson, referred to them by the Hon. the Senate,

RESPECTFULLY REPORT:

That lot No. 13 of the township of Lysander, in the military tract, was reported by the Attorney-General as escheated to the people of this state, whereupon the commissioners of the land-office directed the same to be surveyed and appraised. It was laid out into six subdivisions, which were appraised by Samuel Lyon, Joseph Easton and Peter Schenck, appointed for that purpose, to have been worth, in the year 1800, as follows, viz:

Subdivision No. 1, containing 108.50 acres, at \$2 per acre.

" 2,	"	115.98	" at 4	"
" 3,	"	109.32	" at 4	"
" 4,	"	90.12	" at 4	"
" 5,	"	98.03	" at 4	"
" 6,	"	85.95	" at 4	"

The petitioner, William Stevenson, presented his claim to the lot, as an occupant and settler on it, under a bona fide purchase. After examining his proofs, the commissioners were satisfied that his claim was well founded, whereupon he had the right to purchase the lot according to the appraisement made as before stated: He, however, alleged the appraisement to be too high, and applied to have another made; but the commissioners, having full confidence

in the integrity and competence of the appraisers, considered it inexpedient to direct a new appraisement to be made.

Respectfully submitted.

SIMEON DE WITT, *Surveyor-General.*

GREENE C. BRONSON, *Attorney-General.*

A. C. FLAGG, *Secretary.*

April 8, 1830.

IN ASSEMBLY,

April 3, 1830.

REPORT

Of the Select Committee on the petition of the judges of Chautauque county and others, relative to the erection of a new jail in said county.

Mr. Hazeltine, from the select committee to whom was referred the petition of the judges of Chautauque county, and other inhabitants of that county, for the passage of an act authorising their board of supervisors to raise \$5,000 by tax to build a new jail in that county,

REPORTED—

That it is stated in the petition that the present jail is altogether inadequate to effect the purpose for which it was designed. It is represented to be much decayed, and that it cannot be repaired so as to make it secure. The prisoners now confined in it are guarded at the expense of the county; sentinals being nightly stationed around it to prevent their escape. It is also stated that it is insufficient in size; and that in consequence of this deficiency, the sheriff has found great difficulty in complying with the requisitions of the law directing him to keep prisoners of different grades confined in separate apartments.

Accompanying the petition is a report of the grand jury who attended the last general sessions in that county, made under a charge of the court. This report states, that the grand jury, having examined the jail, are of the opinion that it is insufficient for the purpose intended; that it is too small; that the timbers are decayed, and that measures should be taken to build a new one.

The committee have therefore prepared a bill, which they ask leave to introduce.

IN SENATE,

April 9, 1830.

RESOLUTIONS

Offered by Mr. McMartin.

WHEREAS the government of this state, has at several periods relieved the pecuniary distresses of its citizens, by a loan of moneys at a moderate rate of interest, secured by bond and mortgage on real estate; the payment of annual interest; and finally, of the principal guaranteed by the several counties receiving such loans :

And whereas it is apprehended, that at no former period did the agricultural and other producing classes of our citizens, encounter greater embarrassments in meeting their engagements, than at the present time, nor is the prospect ahead more flattering, owing principally to the depression of real estates, and of their productions, together with the consequent difficulty, if not utter impossibility, of raising funds upon their pledge approximating to their cost, or at a rate of interest warranted by their nett products :

And whereas it is equally incumbent on a wise and just government, to provide a remedy adapted to the exigencies of these interests, although scattered and diversified, and consequently not so easily concentrated and presented, as it is to aid the operations of its commercial interests, through the medium of banking credits, or otherwise :

And whereas it is believed that the principal of the school and literature funds, may be as safely invested in such loans, as in the manner now directed by law, and that such investment may be, anticipated, by creating a stock on a pledge of those funds, which stock may be profitably taken by the canal fund; thus yielding a better revenue to the canal fund, to the school and literature funds ;

IN SENATE,

April 10, 1830.

REPORT

Of the Regents of the University, pursuant to a resolution of the Senate of the 20th March, 1830.

To the honorable the Senate of the State of New-York.

In obedience to the resolution of the honorable the Senate of the 20th March last, requiring the opinion of the Regents of the University as to the best mode of distributing the income of the literature fund, the following report is respectfully submitted :

By the existing laws of the state, the income of the literature fund is to be applied equally among the eight senatorial districts ; and the Regents of the University are required to distribute the portion of each district among the several academies in the same, subject to their jurisdiction, in proportion to the number of scholars pursuing classical, and the higher branches of English studies, in the same respectively. The board of Regents have no discretionary power over this income, except so far as may be required for the payment of their contingent expenses. It will be seen by the table of apportionment for the current year, that under the present rule of distribution there is paid to one district about fourteen dollars for each scholar, while in other districts the apportionment to each scholar amounts to less than three dollars. This inequality is likely to increase rather than diminish, from the number of new academies which are annually rising up, principally in the new counties ; fifteen to twenty of which may be expected to share in the distribution of this income in the coming year, unless some of the institutions in the city of New-York shall be made subject to the visitation of the Regents, so as to participate in the distribution. The Legislature will be competent to decide from this view of the subject,

which of the modes of distribution, that to the districts, based on population, or that to the acadmies, graduated according to the number of scholars, accords best with the objects of the appropriation and the interests of the state.

Although the number and high standing of our academies are subjects of felicitation, yet there is a medium as to numbers, beyond which their usefulness may be questioned. The patronage which would barely sustain one hundred in a feeble, lingering condition, would support half of this number in a state of progressive improvement and usefulness. As most of the academic scholars go from home for instruction, the expense of education would not be materially increased, while its value would be manifestly enhanced by a more conceptrated patronage. The public benefits expected from literary schools do not depend so much upon the *number* as upon the *character* of these schools; not so much upon location as upon the abilities and qualifications of the teachers; the extent of the philosophical apparatus, library, &c. Of the large sums expended by the state upon our academies, it is believed but a small portion has been employed for objects of permanent improvement, owing to their rapid increase and diminution of patronage, resulting as well from this increase as from the establishment of numerous select schools for teaching the higher branches of education.

There is another subject which is entitled to notice in this communication. Agriculture, manufactures and the mechanic arts are the main branches of our national industry, and the primary sources of individual and national wealth. The laborers in these constitute 90 per cent of our population. With them knowledge is not only power, but it is wealth; and with their prosperity is intimately identified the prosperity of the state and nation. These employments are in a great measure based upon principles of science; and they will be productive in proportion as they are guided by her enlightened precepts. The perfection and constantly diminishing prices of European manufactures, and the improvements in European husbandry, are principally owing to the knowledge which science has diffused among the inhabitants of that continent. Chemistry, mechanics and some of the natural sciences are closely connected with the successful prosecution of our manufactures, particularly with the important ones in iron, cotton, wool and in those of glass and leather, and with the profitable improvement of our farms. To be able to compete with European labor, we must keep pace with European improvement.

In our higher schools science is taught rather as an accomplishment than as a useful branch of knowledge ; and as those who study it are generally destined for the learned professions, it holds but a subordinate grade in their acquirements, and seldom sheds its light upon those branches of productive labor which it is calculated most to benefit. Were one or more schools particularly appropriated to qualify young men, by an efficient course of instruction in the useful sciences, for agriculture, manufactures and the mechanic arts, it is believed the result would be found highly satisfactory and useful. Should the legislature accord in these views, a discretionary power might be vested in this board to appropriate a limited portion of the income of the literature fund to make a fair experiment.

From the foregoing considerations the Regents of the University respectfully submit to the consideration of the legislature the following propositions :

1. That a portion of the monies hereafter to be distributed by the Regents of the University to the several academies under their jurisdiction, be applied under their direction to the purchase of scientific books and philosophical apparatus, for the use of such academies. And

2. That the Regents of the University be clothed with a discretionary power to apply a portion of the income of the literature fund to a school or schools, to be devoted particularly to instruction in those branches of science which are applicable and useful to productive labor.

By order of the Regents.

SIMEON DE WITT, *Chancellor.*

G. HAWLEY, *Sec'y.*

IN SENATE,

April 12, 1830.

REPORT

Of the committee on Finance, in relation to the Salary of the State Librarian.

Mr. Bronson, from the committee on finance, to which was referred the bill from the Assembly, entitled "An act fixing the salary of the Librarian of the state library,"

REPORTED AS FOLLOWS, TO WIT :

That the salary now allowed by law to the state librarian, is \$350 per annum ; the bill provides for its increase to \$500.

The first mentioned sum of \$350, your committee believe too small to command such services and such talents as the interest of the state, the utility of the institution, and good economy require. And if it would procure such services ; if a valuable and faithful man, like the present incumbent, can be retained at so cheap a rate, the state must owe the advantage to his misfortunes, some bodily infirmity, which unfits him for more active and more lucrative employments ; an individual calamity of which it does not become the state to profit.

The committee find on inquiry, that the duties of the station have required the personal attendance of the Librarian, for more than three-fourths of the last year, and will, when the court of errors shall renew its sittings at the Capitol, require it for almost the entire year.

So sensible have former Legislatures been of the inadequacy of the salary, that an additional sum has been provided in the supply bill, equal in all to the salary contemplated by the present bill.

Your committee therefore, in accordance with their own opinions, as well as the suggestions of the trustees of the state library, recommend an increase of salary, and that the bill under consideration become a law.

IN ASSEMBLY,

April 2, 1830.

REPORT

Of the Committee on the erection and division of Towns and Counties, on the petition of sundry inhabitants of the county of Westchester, relative to the location of a court-house and jail, &c. for said county.

Mr. Noble, from the committee on the erection and division of towns and counties, to which was referred the petition of sundry inhabitants of the county of Westchester, praying for the appointment of commissioners to fix the site for a court-house and jail and the public offices for said county, and also the remonstrance against the said application,

REPORTED—

That they have examined the said petition and remonstrance, and also heard the parties by their agents. The petitioners represent that the inhabitants of the said county are seriously incommoded by reason of the county being divided into two shires; their court-houses being sixteen miles apart, viz. at White-Plains and Bedford. That the county prison is at White-Plains: that it is attended with considerable expense and risk to transport prisoners to the courts, when held at Bedford; and also that the safety of the public records are endangered by their alternate removal from one place to the other.

It is also represented by the petitioners, that the present public buildings are not of sufficient capacity and of proper construction, for the accommodation of the court and jurors.

The petitioners further state, that they have borne the evils complained of with a great deal of patience and entire resignation ; inspired with the hope that a better state of things may be produced in time.

It is also stated by the petitioners, that the eleven southern towns contained a population in 1825, of 11,880 inhabitants, and the ten northern towns 21,243 ; thereby giving a minority in numbers a majority of the board of supervisors : which advantage they have exercised in relation to questions concerning the public buildings of said county.

It is also stated by the petitioners, that the present public buildings are in a dilapidated state, and will shortly require repairs : and the petitioners further pray, that, if in case new buildings shall be erected, they may be authorised to dispose of their present public lots and buildings, the avails of which shall be paid into the county treasury for the use of said county.

And they further pray, that if in the opinion of the Legislature a bill containing the provisions as above prayed for ought not to pass, that then a law may be passed suspending the operation of the Revised Statutes in relation to county prisoners for one or two years, so far as relates to the county of Westchester ; and also to suspend the operation of the law relative to the location of the clerk's office for said county by the board of supervisors, until the sense of the county can be ascertained by a vote of the taxable inhabitants.

The remonstrance states, that public convenience first established the present system of having two court-houses in this county, and public convenience still as loudly demands it, and that the representation of the petitioners, in relation to the hazard and risk of removing prisoners, and the safety of the public records is endangered by their removal, is untrue. They assert that not one prisoner has ever escaped, and that none of the papers have ever been lost or injured.

It is also stated by the late sheriff of said county, that the expense of removing prisoners to Bedford is trifling, not exceeding ten dollars in any one year.

There has likewise been presented to your committee certificates signed by three of the judges and fifteen supervisors of said county,

stating that the court-houses and jail are sufficiently commodious and in good repair, and protest against any alteration in the location of said buildings; and the supervisors whose names are attached to the said memorial, are located promiscuously throughout said county, as many in the north as in the south part; consequently the argument, that the southern towns, in regard to the public buildings, rule the northern towns, falls to the ground.

It is also said that if the present buildings should be abandoned, the lots with the appurtenances thereunto attached, will revert to the original owner, inasmuch as the county has only a lease of the premises during the time that they shall be occupied for the purposes of public accommodation and use.

With reference to the petition and remonstrance, there appears annexed to said petition 1,913 names, and to the remonstrance 3,035, making a majority opposed to the application of 1,122.

In regard to the last proposition as prayed for by the petitioners, which is that the operation of the law in relation to the public buildings, shall be suspended for one or two years, would, in the opinion of your committee, be wrong; for the reason that the erection of the county clerk's office is contracted for, and funds provided for that purpose.

Your committee, after having given the subject thus referred to them, a careful and deliberate consideration, have come to the conclusion that the prayer of the petitioners ought not to be granted, and would therefore ask leave to offer the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 3, 1830.

REPORT

Of the Select Committee, on the petition of Elihu Granger and others, inhabitants of Phelps, Ontario county, relative to the incorporation of a leather manufacturing company.

Mr. Nicholas, from the select committee to whom was referred the petition of Elihu Granger and others, inhabitants of Phelps, Ontario county, praying for the incorporation of a leather manufacturing company,

REPORTED:

The petitioners represent, that they with other individuals, have formed an association for the purpose of conducting extensively and with increased facilities, the business of manufacturing leather: and they intend, if permitted to act under a corporate name, to create an extensive saving of labor in their business, by the erection of valuable machinery, propelled by water power, which individually they could not accomplish.

Your committee, from facts set forth in the petition and statements submitted to them, are of the opinion that an association formed for such a purpose, and subjected to proper restraint, would be beneficial to community; they therefore ask leave to introduce a bill.

IN SENATE,

April 12, 1830.

REPORT

Of the Revisers, in obedience to a joint resolution
of the Senate and Assembly.

To the Honorable the Legislature of the State of New-York.

In compliance with the joint resolution of the Senate and Assembly, directing the last revisers of the laws, or any two of them, "to prepare and report to the legislature an act containing such provisions as shall have been made by the legislature, or as they may deem necessary, to carry into effect the intention of the legislature in passing the various parts of the Revised Statutes, so that the said act so to be reported, may be acted upon by the legislature in season to have the same published in the third volume of the Revised Statutes," the undersigned

RESPECTFULLY REPORT:

That they have prepared an act which is herewith submitted, containing such explanatory and additional provisions as seem to be required to carry into effect the intention of the legislature in passing the various parts of the Revised Statutes, the object and effect of which are briefly explained in the notes accompanying the same.

It will be seen that the provisions affecting the Revised Statutes, which have been already made by the legislature, have not been included in the act herewith submitted, as required by the joint resolution. Those provisions could not have been inserted without greatly increasing the length of the act; and as they will all be comprised in the third volume of the statutes, the publication of which has been purposely delayed, it was supposed to be unnecessary to repeat them in the present bill. Besides, there are some bills

containing provisions of this nature which are yet pending before the legislature, and the undersigned could not with propriety any longer delay the presenting of this report.

All which is respectfully submitted.

JOHN DUER,
B. F. BUTLER,
J. C. SPENCER.

Albany, April 10th, 1890.

AN ACT

To amend certain provisions of the Revised Statutes, and in addition thereto.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

AMENDMENTS TO CHAPTER XI., PART I.

§ 1. The eleventh Chapter of the First Part of the Revised Statutes shall be and the same is hereby amended, by inserting in the thirty-fourth section of the third Title thereof, after the word "supervisor," the word "assessor ;" so that the said section, as hereby amended, shall read as follows : "§ 34. If any person chosen or appointed to the office of supervisor, *assessor*, commissioner of highways, or overseer of the poor, shall refuse to serve, or shall die, or resign, or remove out of the town, or become incapable of serving before the next annual town meeting after he shall have been chosen or appointed, the town clerk shall within eight days after the happening of such vacancy, call a special town meeting, for the purpose of supplying the same."

[This section and § 36 were altered by the legislature, and from the latter it seems evidently to have been the intention to include the *assessor* among the number of officers to be appointed by the justices. The omission in § 34 was probably accidental.]

§ 2. The said Title shall be, and the same is hereby further amended, by inserting at the end thereof, a new section in the words following, that is to say : "Whenever a vacancy shall occur in any town office, which justices of the peace are authorised to fill, and there shall be less than three justices residing in the town in which such vacancy shall occur, the justice or justices residing in such town may associate with themselves one or more justices of the peace from any adjoining town, as may be necessary to make the number of three, and such three justices shall have the like power to fill such vacancy as if they were respectively justices of the town in which the vacancy occurred."

[It is stated that in some towns there are usually less than three justices ; and vacancies may frequently exist.]

TITLE II., CHAPTER XII., PART I.

§ 3. The fifty-ninth section of the second Title of Chapter twelve, Part First, shall be and the same is hereby amended, by inserting after the word "elected," in the last clause thereof, the words "or appointed ;" so that the said section when amended shall read as follows : "Whenever the office of any county clerk shall become vacant, his deputy shall perform all the duties, and be entitled to all the emoluments, and be subject to all the penalties appertaining to

the office of clerk of the county, until a new clerk shall be elected or appointed, for such county and duly sworn."

[Necessary to conform the section amended to § 49, 1 R. S. 124.]

TITLE I., CHAPTER XX., PART I.

§ 4. The first clause of the twenty-ninth section of the first Title of Chapter twenty, Part First, shall be and the same is hereby amended, by inserting after the word "who," in the first line thereof, the words, "after this Chapter shall commence and take effect," so that the said clause as hereby amended, shall read as follows: "Every person of full age who, *after this Chapter shall commence and take effect*, shall be a resident and inhabitant of any town for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town."

[Doubts have been expressed as to the construction of this clause, the above amendment conforms to an opinion which is understood to have been given by the Attorney-General.]

§ 5. The said Title shall be further amended, by inserting at the end thereof the following sections, which in any future publication of the said title, shall be numbered as the eightieth, eighty-first and eighty-second sections of said Title.

§ 80. In those counties, where there is no county poor-house or other place provided for the reception of the poor, the monies raised and collected in the several towns for the support of the poor, shall be received and disbursed by the overseers of the poor in such towns respectively.

§ 81. It shall be the duty of the commissioners of excise of the several towns, in those counties where there is no county poor-house, or other place provided for the reception of the poor, to pay over to the overseers of the poor in their respective towns all monies received by them by virtue of their offices.

§ 82. In those counties, where a county poor-house or other place shall have been provided for the reception of the poor, it shall be the duty of the commissioners of excise in the several towns, to pay all monies received by them by virtue of their offices, to the county treasurer, notwithstanding the distinction between town and county poor may prevail in such county.

[These three sections are necessary to remove difficulties and to settle questions, which will probably otherwise arise on this Title as passed by the legislature.]

CHAPTER I., PART II.

§ 6. The second Title of the first Chapter, second Part of the Revised Statutes, shall be and the same is hereby amended, by striking out from the third subdivision, of the fifty-fifth section thereof, the words "education and support, or either," and by substituting the word "use" in lieu thereof; so that the said subdivision as amended, shall read as follows: "3. To receive the rents and profits of lands, and apply them to the *use* of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the first article of this title."

[The word "use" includes education and support, and each of them. It will also include other purposes, which ought to be provided for.]

§ 7. The ninety-fifth section of the same title, shall be and the same is hereby amended, by striking out from the first subdivision thereof, the words "entitled to the proceeds or any portion of the proceeds, or other benefits to result from the execution of the power," so that the said subdivision as amended, shall read as follows: "1. When the disposition which it authorises, is limited to be made to any person, or class of persons, other than the grantee of such power."

[The words proposed to be stricken out, were always unnecessary, and may produce doubts.]

§ 8. The fifth Title of the same Chapter, shall be and the same is hereby amended, by inserting in the first clause of the third section thereof, after the words "surrogate having jurisdiction," the words following: "or of the register or assistant register of the court of chancery, where the jurisdiction shall belong to that court," so that the said clause as amended, shall read as follows: "§ 3. The title of a purchaser in good faith, and for a valuable consideration, from the heirs at law of any person who shall have died, seised of real estate, shall not be defeated or impaired, by virtue of any devise made by such person, of real estate so purchased, unless the will or codicil containing such devise, shall have been duly proved as a will of real estate, and recorded in the office of the surrogate, having jurisdiction, *or of the register of the court of chancery, where the jurisdiction shall belong to that court*, within four years after the death of the testator."

[See post § 12 in which provision is made for proving foreign wills, by commission from the court of chancery.]

§ 9. The fifth section, of the second Chapter, of the same Part, shall be and the same is hereby amended, by adding to the section as now enacted, the following words: "and such mother be living, but if such mother be dead, the inheritance descending on her part, shall go to the father for life, and the reversion to the brothers and sisters of the intestate, and their descendants, according to the law of inheritance, by collateral relatives hereinafter provided. If there be no such brothers or sisters, or their descendants living, such inheritance shall descend to the father in fee," so that the said section as amended, shall read as follows: "§ 5. In case the intestate shall die without lawful descendants, and leaving a father, then the inheritance shall go to such father, unless the inheritance came to the intestate on the part of his mother, *and such mother be living, but if such mother be dead, the inheritance descending on her part, shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance, by collateral relatives hereinafter provided. If there be no such brothers or sisters, or their descendants living, such inheritance shall descend to the father in fee.*"

[Under the sixth section of this chapter, which was introduced during its passage through the legislature, an inheritance on the part of the father may descend to the mother in fee, in exclusion of the collateral relatives of the father, and under the twelfth section, an inheritance on the part of the mother in default of collateral relatives on her side, would go to the collateral relatives of the father, although he himself might then be living. It seems unreasonable that the mother should possess greater privileges than the father, and still more so, than a brother or sister of the father, should be entitled to take in preference to him. The amendment

proposed, removes these incongruities, and renders the provisions of the statute reasonable and consistent.]

CHAPTER VI., PART II.

§ 10. The first Title of the sixth Chapter of the same Part shall be, and is hereby amended, by adding the following words at the end of the seventh section thereof: "and if there be no such surrogate, then before the surrogate of any county in which any real estate devised by such will shall be situated:" so that the said section, as amended, shall read as follows: "§ 7. When any real estate shall be devised by will, any executor or devisee named therein, and any person interested in such estate, may have such will proved before the surrogate of the county to whom the probate of the will of the testator would belong, in respect to personal property, under the second Article of this Title; and if there be no such surrogate, then before the surrogate of any county in which any real estate devised by such will shall be situated."

[By § 28, Revised Statutes, vol. 2, p. 60, it is necessary, to give the surrogate jurisdiction in the case of a will made by a person not being an inhabitant of this state, that assets should be, or should come, within this state. Cases may occur in which there are, and can be, no assets within this state, but in which it may be necessary to prove the will as to the realty.]

§ 11. The fifty-sixth section of the same Title shall be, and is hereby amended by striking out the words "to impeach the validity or execution of such will," and by substituting in the place thereof the following words: "to obtain a reversal of the decision so appealed from." So that the said section, as hereby amended, shall read as follows: "§ 56. The party filing such appeal shall at the same time execute and file with the surrogate a bond in the penalty of one hundred dollars, to the people of this state, with such sureties as the surrogate shall approve, conditioned for the diligent prosecution of such appeal, and for the payment of such costs as shall be taxed against him in the event of his failure to obtain a reversal of the decision so appealed from. No appeal shall be deemed valid until such bond be filed."

[Necessary to adapt the bond to all the cases that may arise.]

§ 12. The said first Title shall be, and the same is hereby further amended by inserting in the third Article thereof, after the sixty-second section, the seven following new sections, as sections sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight and sixty-nine of that Title.

"§ 63. A will duly executed according to the laws of this state, where the witnesses to the same reside without the jurisdiction of this state, or a duly exemplified or authenticated copy thereof, where the original will is in the possession of a court or tribunal of justice in another county or state, whence the same cannot be obtained, may be proved in the court of chancery upon a commission to be issued for that purpose, on application to the chancellor.

"§ 64. Such commission may be issued upon the petition or bill of any person interested in the establishment of the said will, and such notice shall be given to the parties interested to oppose the validity thereof as the chancellor shall direct; or such notice may

be dispensed with where, from the circumstances of the case, it shall be deemed unnecessary.

“§ 65. If the facts necessary to establish the validity of the said will shall appear on the proof so taken, the chancellor shall direct the said will or copy, and the proofs or examinations, to be recorded in the office of the register of that court.

“§ 66. Every will or copy so proved shall have a certificate of such proof endorsed thereon, signed by the register, and attested by the seal of the court of chancery, and may then be read in evidence without further proof thereof; and every record so made, or an exemplification thereof, shall be received in evidence, and shall be as effectual in all cases as the original will would be if produced and proved, and may in like manner be repelled by contrary proof.

“§ 67. The provisions contained in the preceding four sections shall extend to wills of personal as well as of real property, and to wills already executed, as to such as shall be hereafter executed; and where there shall be assets of the testator within 'his state, and due notice shall have been given to the parties interested to oppose the will, the chancellor may by decree establish the same as a will of personal estate, and in such case shall transmit such decree to be recorded in the office of the surrogate having jurisdiction, with directions to such surrogate to issue letters testamentary or of administration with the will annexed thereon, in the same manner as upon wills duly proved before him.”

“§ 68. Wills of personal estate duly executed by persons residing out of this state, according to the laws of the state or country in which the same were made, may be proved under a commission to be issued by the chancellor, and when so proved may be established and transmitted to the surrogate having jurisdiction, as provided in the last preceding section; and where a will so executed shall have been duly admitted to probate in such state or country, letters testamentary or of administration, with the will annexed, may also be issued thereon by the surrogate having jurisdiction, upon the production of a duly exemplified or authenticated copy of such will, under the seal of the court in which the same shall have been proved.”

“§ 69. But no will of personal estate, made out of this state by a person not being a citizen of this state, shall be admitted to probate under either of the preceding provisions, unless such will shall have been executed according to the laws of the state or country in which the same was made.”

[There was no provision in the old statute, nor is any contained in the new, relative to the proof of foreign wills. The above sections will remedy the omission in a manner which it is believed will be entirely safe.]

§ 13. The third section of the second Title of the same Chapter shall be, and the same is hereby amended by striking out, in the third sub-division of the same section, the words “who has not taken the preliminary measures to entitle him to naturalization,” and inserting the words “not being an inhabitant of this state,” so that

the said sub-division, as amended, shall read as follows : " § 3. An alien, *not being an inhabitant of this state.*"

[The propriety of so amending the law as to allow resident aliens to administer, has been strongly recommended to the revisers by the able and experienced surrogate of New-York.]

§ 14. The thirty-second section of the same Title shall be, and the same is hereby amended by striking out the words "who is" in the third line thereof, and by adding after the words "United States" in the same line, the words "unless such person reside within this state;" so that the said section, as hereby amended, shall read as follows : " § 32. No letters of administration shall be granted to a person convicted of an infamous crime, nor to any one incapable by law of making a contract, *nor to a person not a citizen of the United States, unless such person reside within this state,* nor to any one who is under twenty-one years of age, nor to any person who shall be judged incompetent by the surrogate, to execute the duties of such trust, by reason of drunkenness, improvidence, or want of understanding, nor to any married woman; but where a married woman is entitled to administration, the same may be granted to her husband in her right and behalf."

[Same as last section.]

§ 15. The thirty-fifth section of the same Title shall be, and the same is hereby amended by adding after the word "person" in the third line of the same section, the words "not an inhabitant of this state;" so that the said section, as amended, shall read as follows : " § 35. When any person shall apply for administration, either with the will annexed, or in case of intestacy, and there shall be any other person, *not an inhabitant of this state,* having prior right to such administration, the applicant shall produce, prove and file with the surrogate a written renunciation of the persons having such prior right. If he fail to do so, before any such letter shall be granted a citation shall be issued to all persons having such prior right, to show cause at a day therein specified why administration should not be granted to such applicant."

[The alteration is necessary to guard the rights of persons in other states.]

§ 16. The forty-eighth section of the same Title shall be and the same is hereby amended, by adding at the end thereof, as now enacted, the following words—"or shall be a witness thereto," and also by inserting between the words "executor" and "in," the words "or trustee;" so that the said section, as amended, shall read as follows : " § 48. No surrogate shall admit to probate any will, or grant letters testamentary or of administration, in any case or upon any estate where he shall be interested as next of kin to the deceased, or as a legatee or devisee under such will, or where such surrogate shall be named as executor *or trustee in such will, or shall be a witness thereto.*"

[The cases provided for in these alterations are equally within the object of the provision.]

§ 17. The fifty-third section of the same Title shall be, and the same is hereby amended, by striking out therefrom the words "in his own hand writing," and by inserting therein, between the words

"shall" and "certify," the words "sign and"; so that the said section, as amended, shall read as follows: "§ 53. Whenever any will, letters testamentary or of administration, shall be entitled or required by law to be recorded by such first judge acting as surrogate, he shall record the same in the books kept for that purpose by the surrogate, and shall *sign and certify* the same under his own hand."

[It seems unnecessary and inconvenient to require the first judge to make the record with his own hand.]

§ 18. The same Title shall be and the same is hereby further amended, by striking out the fifty-fourth section as now enacted, and inserting in lieu thereof the following: "§ 54. The same causes which preclude the surrogate from acting, shall apply equally to the first judge, and when both shall be thus incapable of acting, and when the offices of both shall be vacant, the district attorney of the county, if not incapacitated by the same causes, shall have the same powers as are given by the preceding sections to the first judge, and shall proceed in the same manner. When there shall be no person capable of acting under the provisions of this title, the chancellor upon petition, shall issue a commission to some suitable person, empowering him to act as surrogate in the premises."

[The office of surrogate is one of those in which a vacancy should never be permitted.]

§ 19. The first section of the fourth Title of the same Chapter shall be and the same is hereby amended, by striking out therefrom the following words: "and shall have rendered an account of their proceedings to the surrogate, and the same shall have been allowed and settled," so that the said section as amended shall read as follows: "§ 1. After the executors or administrators of any deceased person shall have made and filed an inventory according to law, if they discover the personal estate of their testator or intestate to be insufficient to pay his debts, they may at any time within three years after the granting of their letters testamentary or of administration, apply to the surrogate for authority to mortgage, lease or sell so much of the real estate of the testator or intestate, as shall be necessary to pay such debts."

[Several surrogates have recommended the propriety of this change.]

§ 20. The fifth Title of the same Chapter shall be and is hereby amended, by inserting after the eighteenth section of that Title the following as a new section:

"§ 19. Whenever an executor or administrator shall refuse or omit to perform any decree made against him by a surrogate having jurisdiction, for rendering an account, or upon a final settlement, or for the payment of a debt, legacy or distributive share, such surrogate may cause the bond of such executor or administrator to be prosecuted, and shall apply the monies collected thereon in satisfaction of such decree, in the same manner as the same ought to have been applied by such executor or administrator."

[This provision seems necessary to the perfection and harmony of the system.]

[No. 404.]

CHAPTER VIII., PART II.

§ 21. The tenth section, of the first Title of Chapter eight, Part second, shall be and the same is hereby amended, by striking out from the first subdivision thereof, the words "their respective ages and places of residence, and their profession, trade or occupation," and inserting in lieu thereof, the words "their respective places of residence; and that they are of sufficient age to be capable in law of contracting marriage;" so that the said subdivision as hereby amended, shall read as follows: "1. The christian and surnames of the parties; their respective places of residence; *and that they are of sufficient age to be capable in law of contracting marriage.*"

[See note to § 28 post.]

§ 22. The eleventh section of the said Title, shall be and the same is hereby amended, by striking out the words "any magistrate," in the last clause thereof, and inserting in lieu thereof, the words, "such minister or magistrate," so that the said section as hereby amended, shall read as follows: "§ 11, If either of the parties, between whom the marriage is to be solemnized, shall not be personally known to him, the minister or magistrate shall require proof of the identity of such party, by the oath of some person known to him; which oath *such minister or magistrate* is hereby authorised to administer."

§ 23. The thirteenth section of the said Title, is hereby amended, by striking out of the first subdivision thereof, the word "ages," and also the words "and their trade, profession or occupation," and also by adding at the end of the said subdivision, the following words: "and that he had ascertained that they were of sufficient age to contract marriage," so that the said subdivision as hereby amended, shall read as follows: "1. The names and places of residence of the parties married, and that they were known to such minister or magistrate, or were satisfactorily proved, by the oath of a person known to him, to be the persons described in such certificate, *and that he had ascertained that they were of sufficient age to contract marriage.*"

§ 24. The sixteenth section of the said Title, shall be and the same is hereby amended, by striking out of the first subdivision, the word "ages," and also the words "and their trade, profession or occupation," so that the said subdivision as hereby amended, shall read as follows: "1. The names and places of residence of the persons married."

§ 25. The nineteenth section of the said Title, shall be and the same is hereby amended, by adding thereto, the following clause: "nor shall the provisions of this Article be construed to require the parties to any marriage, to contract the same in the manner herein prescribed; but all lawful marriages contracted in the manner heretofore in use in this state, shall be as valid as if this Article had not been passed;" so that the said section as hereby amended, shall

read as follows : " § 19. The provisions of this article, relative to the solemnization and proof of marriages, shall not apply to the people called Quakers, nor to Jews, whose marriages may respectively continue to be solemnized, in the manner, and agreeably to the regulations of their respective societies. *Nor shall the provisions of this Article be construed to require the parties to any marriage, to contract the same in the manner herein prescribed ; but all lawful marriages contracted in the manner heretofore in use in this state, shall be as valid as if this Article had not been passed.*"

§ 26. The thirty-fourth section of the said Title, shall be and the same is hereby repealed.

[The amendments to the marriage law, proposed in the preceding sections, seem necessary to remove popular objections to its provisions, as well as to carry into effect, the intention of the Legislature by which it was passed. By referring to the Revisers report, it will be seen that the statute as proposed by them, required *all marriages* to be solemnized in the manner therein prescribed, with a view to prevent abuses; to furnish the means of proving marriages, and to authenticate and preserve such proof. The joint committee to which the subject was referred, and the Legislature, concurred in the utility of providing means for authenticating the proof; and in reference to cases where the parties *desired their marriages to be registered and authenticated*, they concurred in the expediency of prescribing the solemnities to be observed; but they did not concur in the expediency of providing that all marriages should be solemnized in the manner prescribed. Several sections were therefore stricken out, and others were amended, to conform with this intention. For example, § 8 was reported as follows: "*marriages shall be solemnized only by the following persons,*" &c.]

Intending to retain the section as a guide to those who wished their marriages to be solemnized, in such a manner that they might be recorded and regularly authenticated, the following clause was prefixed: "*For the purpose of being registered and authenticated according to the provisions of this title, marriages shall be solemnized,*" &c. and with this alteration the section was adopted.

To those who were acquainted with the course of proceeding, the object of this amendment was perfectly understood; but to those who form their opinion from the language, it must be admitted that it is not so precise as to prevent doubts, whether the prescribed solemnities are not obligatory in all cases. This difficulty is increased by the retaining of § 34, which authorises a bill to avoid a marriage *irregularly solemnized* and not consummated, which, in consistency with the former alterations, ought to have been stricken out. The amendments now proposed, will carry into effect the intention of the legislature. As reported by the revisers, the title authorised the *minister* as well as the magistrate by whom the marriage was solemnized, to administer an oath when necessary, to identify the parties; and it did not require him to ascertain the "*trade, profession or occupation of the parties.*" The alterations made in these particulars, in the course of enactment, have given rise to very general complaint. There seem also to be objections to that part of the law which requires the *ages* of the parties to be ascertained. The amendments now proposed, will it is presumed, remove these causes of dissatisfaction.]

§ 27. The seventh section, of Title third, of chapter eight, Part second, is hereby repealed.

[This section prescribes the order of preference, in allowing guardians for minors under 14. It is suggested by experienced surrogates, that difficulties may arise in pursuing the order prescribed in this section, and as the preceding section gives the surrogate the same power as is possessed by the chancellor, it is deemed best to repeal the section in question.]

CHAPTER I., PART III.

§ 27. The ninety-first section, of the second Title, of Chapter one, Part third, shall be and the same is hereby amended, by striking out the the words, "and other papers filed in the cause," and inserting in lieu thereof, the words, "and such other papers filed in the cause, as the chancellor shall from time to-time, by general rules direct," and by adding to the said section, the following words: "together with a brief statement or abstract, to be prepared in such form as the chancellor shall direct, and in no case to exceed five folios, of the proceedings from time to time had in the cause;" so that the said section as hereby amended, shall read as follows : " § 91. After the expiration of thirty days from the time a final decree shall have been entered in the minutes of the court, if no appeal shall have

been entered therefrom, and if no petition for a rehearing shall have been presented, upon being required by either party, the register, assistant register or clerk, by whom such final decree shall have been entered, shall attach together the bill, pleadings *and such other papers filed in the cause, as the chancellor shall from time to time, by general rules direct*, together with the taxed bill of costs therein; and shall annex thereto, a fair, engrossed copy of the decretal order of the chancellor or vice-chancellor, signed by the chancellor or by the vice-chancellor, rendering such decree, and countersigned by the register, assistant register or clerk, who entered the same, *together with a brief statement or abstract, to be prepared in such form as the chancellor shall direct, and in no case to exceed five folios, of the proceedings from time to time had in the cause.*"

[The section proposed to be amended, was intended to provide a substitute for the heavy expense attending the enrolment of decrees as formerly practised. The amendments now proposed retain this end, and remove some difficulties as to form.]

§ 28. The said Title, shall be and the same is hereby further amended, by striking out of the first subdivision, of the ninety-fourth section thereof, the word "proceedings," and inserting in lieu thereof, the words "bill or petition," so that the said subdivision as hereby amended, shall read as follows: "1. The names at length of all the parties to such decree, designating particularly those against whom it is rendered, the county of which they are respectively residents, if they are residents of this state, and if not, the state or country in which they reside, and their title, trade or profession, if any such be stated in the *bill or petition*, on which the decree is founded."

[The proceedings in a cause, are generally so numerous and voluminous, that the duty of searching all, is burthensome to the officer, and calculated to create mistakes.]

§ 29. The seventh section, of the third Title, of said Chapter, shall be and the same is hereby amended, by inserting after the word "attendance" the words "together with all monies paid by such sheriff, for fuel or other necessary expenses which the comptroller shall deem reasonable," so that the said section as hereby amended, shall read as follows: "§ 7. The sheriff of the county in which any term of the court shall be held, shall before the commencement of such term, summon two constables of his county, to attend the same. The said sheriff and the constables so summoned, shall attend the court during its sitting; and the compensation allowed by law for such attendance, *together with all monies paid by such sheriff, for fuel and other necessary expenses, which the comptroller shall deem reasonable*, shall be paid out of the treasury of this state."

[These expenses were formerly paid by custom, out of the funds in the court of exchequer; but are not now provided for by law.]

CHAPTER II., PART III.

§ 30 The sixth section of the first Title, of Chapter two, Part third, shall be and the same is hereby amended, by inserting in the first subdivision thereof after the word "witness," the words "re-

siding or being in any part of this state," so that the said subdivision as hereby amended, shall read as follows : " 1. To issue subpoenas under his seal of office, to compel the attendance of any witness *residing or being in any part of this state*, or the production of any paper, material to any inquiry pending in his court, the form of which shall be similar to that used by courts of record in the like cases."

[Some surrogates have doubted their power under the provision, as it now stands, to issue a subpoena to another county.]

§ 31. The fourth Title, of Chapter second, Part third, shall be and the same is hereby amended, by inserting at the end thereof, the following as sections 282 and 283.

" § 282. When the name of any defendant shall not be known to the plaintiff, he may be described in the summons or warrant by a fictitious name ; and if a plea in abatement be interposed by such defendant, the justice before whom the suit is pending, shall amend the proceedings according to the truth of the matter, and shall thereafter proceed therein, in like manner as if the defendant had been sued by his right name.

[This section is conformable in principle to § 8 R. S. vol. 2, p. 247; but that applies only to proceedings in higher courts.]

" § 283. In the city of Albany, causes may be removed from the justices court, by certiorari or appeal, to the mayor's court of said city ; and that court shall have the like power, and shall proceed in like manner, so far as may be, as the courts of common pleas in like cases.

[This jurisdiction was formerly possessed, and is highly necessary and useful.]

CHAPTER III., PART III.

§ 32 The sixth section, of the first Title, of Chapter third, Part third, shall be and the same is hereby amended, by striking out of the same, the words, " or of which he can take cognizance," and inserting in lieu thereof, the words " or which he has reason to believe will be brought before him for decision," so that the said section as hereby amended, shall read as follows : " § 6. No judge, commissioner or other judicial officer, shall demand or receive any fees or other compensation, for giving his advice, in any matter or thing pending before such judge, or officer, *or which he has reason to believe will be brought before him for decision* ; or for drafting or preparing any papers, or other proceedings relating to any such matter or thing, except in those cases where fees are expressly given by law to such judge or officer, for services performed by him."

[The section as enacted, has been thought too extensive; especially in reference to judges of the county courts. The proposed amendment will more clearly express the probable intent of the Legislature.

§ 33. The second Title, of Chapter third, Part third, shall be and the same is hereby amended, by inserting in the fifty-fourth section thereof, after the word " independence," the words following, "*in the city of New-York, from nine o'clock in the forenoon, to five o'clock in the afternoon*, and in all other parts of the state," so that the said section as hereby amended, shall read as follows : " § 54.

The clerks of counties, and of all courts of law and equity in this state, the register and assistant register of the court of chancery, and the register of deeds in the city and county of New-York, shall respectively keep open their several offices for the transaction of business, every day in the year, except Sundays, and the day observed as the anniversary of American independence, *in the city of New-York, from nine o'clock in the forenoon, to five o'clock in the afternoon, and in all other parts of the state, from nine to twelve o'clock in the forenoon, and from two to five o'clock in the afternoon.*"

[The section as it now stands, leads to the closing of the offices in New-York, during business hours.]

CHAPTER V., PART III.

§ 34. The eighth section of the third Title of Chapter five, Part third, shall be, and the same is hereby amended, by inserting after the word "necessary" the words "in the first instance;" so that the said section, as hereby amended, shall read as follows: "§ 8. It shall not be necessary, in the first instance, to make any creditor having a lien on the premises in question, or on any part thereof, by judgment, decree, mortgage or otherwise, a party to the proceedings, nor shall the partition of the premises alter, affect, or impair the lien of such creditors, except in the cases provided for in the next section."

[See note to § 32.]

§ 35. The said Title shall be, and the same is hereby further amended, by inserting after the ninth section thereof the following, as a new section.

"§ 10. But the parties presenting such petition may at their election make every creditor having a specific lien on the undivided interest or estate of any of the parties, by mortgage, devise or otherwise, a party to the proceedings; and in such case the petition shall set forth the nature of every such lien or incumbrance."

[See note to § 32.]

§ 36. The forty-second section of the said Title shall be, and the same is hereby repealed; and in lieu thereof the following shall be substituted.

"§ 42. Before the making of any order for the sale of the said premises, where the creditors having specific liens shall not have been made parties, the court, on the motion of either party, shall direct the petitioner to amend his petition, by making every creditor having a specific lien on the undivided interest or estate of any of the parties, by mortgage devise, or otherwise, a party to the proceedings; and shall direct the clerk of the court to ascertain and report, whether the shares or interests in the premises of the parties in such suit, or any of them, are subject to any general lien or incumbrance by judgment or decree."

[See note to § 32.]

§ 37. The forty-third section of the said Title shall be, and the same is hereby repealed; and in lieu thereof the following shall be substituted.

“§ 43. The clerk to whom such reference shall be made, shall immediately thereafter cause a notice to be published once in each week for six weeks successively, in the state paper, and also in a newspaper printed in every county in which any of the lands in question are situated, requiring all persons having any general lien or incumbrance on any undivided interest or share therein, by judgment or decree, to produce to said clerk on or before a certain day to be named in such notice, proof of all such liens and incumbrances, together with satisfactory evidence of the amount due thereon; and the clerk shall report with all convenient speed the names of the creditors, the nature of the incumbrances, the dates thereof, and the several amounts appearing to be due thereon.”

[See § 39.]

§ 38. The forty-fourth section of the said Title, shall be, and the same is hereby amended, by inserting after the word “by,” in the first line, the words “the proceedings on such petition, or by such;” so that the said section, as amended, shall read as follows: “§ 44. If it shall appear *by the proceedings on such petition, or by such report*, that there are any existing incumbrances upon the estate or interest in the premises of any party named in the proceedings in the suit, the court shall, in the order of sale, direct the commissioners to bring into court, and pay to the clerk thereof, the portion of the monies arising from the sale of the estate and interest of such party, after deducting the portion of the costs, charges and expenses to which it shall be liable.”

[See § 39.]

§ 39. The said Title shall be further amended by adding after the sixty-first section thereof a new section, in the following words: “§ Such conveyances shall also be a bar against all persons having general liens or incumbrances by judgment or decree on any undivided share or interest in the premises sold, in all cases where the notice to such creditors, hereinbefore prescribed, shall have been given; and also against all persons having specific liens on any undivided share or interest therein, who shall have been made parties to the proceedings. But no creditor having any such specific lien shall be affected by such sale or conveyance, unless he shall have been made party to the proceedings.”

[From the nature of the subject it seems almost impossible so to provide for disposing of incumbrances, in cases of partition, as to avoid complexity and expense. The defects of the old statute in this particular, were so great that the revisers were earnestly solicited to devise a remedy. The plan of directing the clerk of the court to ascertain and pay off the liens was, therefore, proposed and adopted; but under the existing system, the offices in which liens are to be sought for are so numerous, and the expenses, difficulties and hazards of making searches so great that it seems necessary to substitute some simpler mode. After much reflection, and with the aid of the valuable suggestions of a judicial officer whose duties have made him familiar with this difficult subject, the preceding amendments are proposed, not as entirely free from objection, but as the best which can now be suggested.]

§ 40. The eighty-sixth section of the same Title, shall be and the same is hereby amended, by inserting before the words, “such a part of the said estate,” the words, “a sale thereof or of,” so that the said section as hereby amended, shall read as follows: “§ 86. Whenever it shall appear satisfactorily, by due proof, or on the report of a master, to the court of chancery, that any infant holds

real estate, in joint tenancy, or in common, or in any other manner which would authorise his being made a party to a suit in partition, and that the interest of such infant, or of any other person concerned therein, requires that partition of such estate should be made, such court may direct and authorise the general guardian of such infant to agree to a division thereof, *or to a sale thereof or of such a part of the said estate*, as in the opinion of the court shall be incapable of partition, or as shall be most for the interest of the infant to be sold."

[Necessary to correct a clerical mistake.]

§ 41. The same Title shall be and is hereby further amended, by inserting therein, after the 88th section thereof, the following as a new section: "§ . Whenever such infant shall be a married woman, the court of chancery, upon petition, may appoint her husband as her guardian, and to every husband so appointed, the provisions of the three last preceding sections shall be deemed to apply."

[This case has never been provided for by our statutes.]

§ 42. The eightieth section of the same Title shall be, and the same is hereby amended, by striking out thereof the words "in the next section," and inserting in lieu thereof the word "hereinafter;" so that the said section, as hereby amended, shall read as follows: "§ 80. The same notice shall be given, served and published, and verified by affidavit; guardians of minors shall be appointed, the same rules as to parties shall apply, and the like proceedings shall be had as herein before directed, except as *herein after* provided."

[Rendered necessary by the next proposed amendment.]

§ 43. The same Title shall be, and the same is hereby further amended, by inserting therein after the eighty-third section thereof, a new section, in the words following: "§ . Whenever a reference to ascertain and report incumbrances shall become necessary, the same may be made to a master, or to a register or clerk, as the court shall think fit."

[It will be convenient to give the chancellor this discretion.]

§ 44. The thirty-eighth section of the eighth Title, of Chapter eight, Part third, shall be, and the same is hereby repealed.

[See post § .]

CHAPTER VIII., PART III.

§ 45. The forty-third section of the sixth Title of Chapter eight, Part third, shall be, and the same is hereby repealed; and in lieu thereof the following sections shall be inserted in the second Article of the said Title, at the end thereof, as sections forty-three, forty-four and forty-five.

§ 48. It shall be the duty of the clerks of the several courts of record in the city and county of New-York, within twenty days after the adjournment of their respective courts, to deliver a list of the persons upon whom fines shall have been imposed by the said court, for their non-attendance as jurors, together with the amount

of such fine, to the clerk of the court of common pleas in and for the said city and county of New-York.

§ 44. The clerk of the said court of common pleas shall deliver to the district attorney of the said city and county the names of all persons who have been fined for their non-attendance as jurors, and whose fines have not been remitted by the said court of common pleas; and the said district attorney may proceed to collect the same, by an action of debt, to be brought in the said court of common pleas, and judgments may be entered for the amount of such fine and costs of suit.

§ 45. The said court of common pleas may allow the clerk of the said court out of the fines so collected as aforesaid, such reasonable compensation as to the court shall seem just for the duties performed by him in pursuance of the provisions of this article. And for the services performed by him in relation to jurors for the city and county of New-York, the residue of the monies so collected shall be paid over and applied as now provided by law.

[The section stricken out excepted the city of New-York from the provisions of the Revised Statutes relative to the collection of fines and recognizances. The district attorney of that city recommends the foregoing provisions in preference to the former laws applicable to that city.]

CHAPTER IX., PART III.

§ 46. The second Title of Chapter nine, Part third, shall be, and the same is hereby amended, by striking out of the last clause of the thirty-ninth section of said Title, the words "to file such information in every instance in which," and inserting in lieu thereof the word "whenever," and by adding to the said clause the words following: "to file such information in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the people of this state against all costs and expenses to be incurred thereby;" so that the said clause, as hereby amended, shall read as follows: "And it shall be the duty of the attorney-general, *whenever* he shall have good reason to believe that the same can be established by proof, to file such information in every *case of public interest; and also in every other case in which satisfactory security shall be given to indemnify the people of this state against all costs and expenses to be incurred thereby.*"

[The attorney-general suggests that the guard proposed in this amendment is highly necessary, the state being now subject to costs.]

CHAPTER X., PART III.

§ 47. The first Title of Chapter ten, Part third, shall be, and the same is hereby amended, by inserting therein after the twelfth section thereof a new section in the words following: "§ 13. In all actions brought in any court of common pleas in favor of the people of this state, other than suits for penalties not exceeding fifty dollars, if the plaintiffs recover judgment for any amount they shall recover costs."

[The exemption in favor of the people, as respects costs, is taken away by the Revised Statutes. As the law, therefore, now exists, if a suit should be brought in the common pleas for a *fine under fifty dollars*, the plaintiffs would be obliged to pay costs: and the justices' court have no jurisdiction in the case.]

§ 48. The third Title of the said Chapter shall be, and the same is hereby amended, by altering the eighteenth section thereof so that the second clause of that section shall read as follows: "For serving a declaration in ejectment the same fees as are allowed to sheriffs for similar services, and for serving a declaration in any other cause commenced by such service, twenty-five cents."

[The Revised Statutes authorize the commencement of a suit by declaration instead of a writ; and so great is the superiority in point of expedition and convenience, of the former over the latter mode of proceeding, that most of the suits, as we are informed, are now commenced by declaration. Numerous complaints, however, have been made on the part of the sheriffs, that the fees of their offices are greatly reduced, the declarations being generally served by the attorneys or their clerks. It has been, therefore, thought just to give the attorney, when the service is performed under his direction, the same fee as is allowed for serving any other notice, which is twenty-five cents only. This will probably induce the delivery of declarations to sheriffs for service, in all cases where the party does not reside in the immediate vicinity of the attorney. The provision is not extended to the service of a declaration in ejectment, because in that particular no alteration has been effected in the fees of the sheriff.]

§ 49. The thirty-eighth section of the said Title shall be, and the same is hereby amended, by striking out the clause following: "serving an attachment against the property of any debtor or upon any ship or vessel, the same poundage upon the value of the property seized, as upon executions; such value to be determined by the inventory and appraisal of such property, if there be any made, or by proof to the satisfaction of the officer issuing such warrant," and inserting in lieu thereof the clause following: "For serving an attachment against the property of a debtor under the provisions of Chapter one of the second part, or against a ship or vessel under the provisions of the eighteenth Title of Chapter eighth of Part third, fifty cents, with such additional compensation for his trouble and expenses in taking possession and procuring the property attached, as the officer issuing the warrant shall certify to be reasonable. And where the property so attached shall afterwards be sold by the sheriff, he shall be entitled to the same poundage on the sum collected as if the sale had been made under an execution."

[The fees allowed by the clause proposed to be stricken out, are found to be too great; the rule proposed will be just to the officer and not injurious to the parties.]

CHAPTER I., PART IV.

§ 50. The ninth section of the second Title of Chapter one, Part Fourth, shall be, and the same is hereby amended, by inserting between the word "shall," and the words "be deemed," the following words: "in case the death of such child, or of such mother be thereby produced"; so that the said section, as hereby amended, shall read as follows: "§ 9. Every person who shall administer to any woman, pregnant with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, *in case the death of such child, or of such mother be thereby produced*, be deemed guilty of manslaughter in the second degree."

[Necessary to remove doubts.]

§ 51. The seventh Title of the said Chapter shall be, and the same is hereby amended, by inserting therein, after section thirty, a new section, in the words following: "§ 31. The term 'felonious,' when used in any statute, shall be construed as synonymous in meaning with the word 'criminal;' and the term 'feloniously,' when so used, as synonymous in meaning with the word 'criminally.'"

[The old common law sense of the term "*felony*," being no longer applicable in this state, it was declared to mean any crime punishable by imprisonment in the *state prison*. The terms *felonious* and *feloniously*, however, were, in several cases, copied from the former statutes; and unless defined, doubts may arise as to their effect. As they are frequently used in reference to offences which are not punishable by imprisonment in the state prison, and always as synonymous with *criminal* and *criminally*, it is proposed so to declare by this amendment.]

CHAPTER II., PART IV.

§ 52. The second Title of Chapter two, Part Fourth, shall be, and the same is hereby amended, by inserting therein a new section, next after the twenty-first section thereof, in the words following:

"§ 22. Nothing contained in the preceding sections, shall be construed to require any magistrate before whom a prisoner charged with a misdemeanor shall be brought, to take the examination of such prisoner, except where such magistrate shall deem it material so to do, or where such examination shall be required by the prisoner."

[It is suggested that the statute, as it now stands, leaves no discretion as to examinations; and that in cases of petty misdemeanors, it is needless.]

§ 53. The twenty-fifth section of the said Title, shall be, and the same is hereby amended, by striking out the word "Title" at the end thereof, and inserting in lieu thereof the word "Chapter;" so that the said section, as amended, shall read as follows: "§ 25. If the offence with which the prisoner be charged, be bailable by a justice of the peace, or an alderman of a city, and the prisoner offer sufficient bail, such bail may be taken, and the prisoner discharged; if no bail be offered, or the offence be not bailable by a justice or alderman, the prisoner shall be committed to prison, except in cases in which a court of special sessions shall be authorised to try such prisoner, as provided by this Chapter."

[To correct a clerical mistake.]

§ 54. The fourth Title of the said Chapter shall be, and the same is hereby amended, by inserting therein, after the fifty-second section thereof, the following, as a new section: "§ 53. It shall not be necessary in any indictment for perjury or subornation of perjury, to set forth any part of any record or proceedings, either in law or equity; or to set forth the commission or authority of the court or person before whom the perjury was committed: but in every such indictment, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath was taken, averring such court or person to have competent authority to administer the same, together with the proper averments to falsify the matter wherein the perjury is assigned."

[§ 52 provides that no indictment shall be invalid, "*by reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant.*" This is a new provision, and it is conceived abundantly covers the particular provision in 1 R. L. 171, § 2, relating to indictments in perjury, which was omitted; but as the question has been raised, and is not yet decided, it is thought best, for greater caution, to insert this amendment.]

§ 55. The said Title shall be, and the same is hereby, further amended, by inserting after the fifty-fifth section thereof, the following as a new section. "§ 56. Every warrant so issued, may be directed to the sheriff and constables of any county in this state; and when the same shall be served in any county other than that in which the indictment shall have been found, the same proceedings shall be had as on an endorsed warrant issued before the indictment as prescribed in the second Title of this Chapter.

[This will provide a more convenient mode than that now required.]

CHAPTER IX., PART I.

§ 56. The twelfth Title of Chapter nine Part First, shall be, and the same is hereby amended, by adding to the first section of the said Title, the words following: "except that where the premises for which the action is brought, are not occupied by any person, and no person shall be known as claiming title thereto, the supreme court, on affidavit of such facts, may allow the suit to be brought as against claimants unknown, and the declaration and notice shall be served by publishing the same in such manner and for such time as the court shall direct; and if no person shall appear in the said action, the default of the claimants unknown shall be entered, and judgment be rendered thereon;" so that the said section, as hereby amended, shall read as follows: "§ 1. Whenever the Attorney-General shall be informed, or have reason to suspect, that the people of this state have title to any real estate by escheat, he shall cause an action of ejectment to be brought for the recovery thereof, in which action the proceedings shall, in all respects, be similar to those usually had in other actions of ejectment, 'except that where the premises for which the action is brought are not occupied by any person, and no person shall be known as claiming title thereto, the supreme court, on affidavit of such facts, may allow the suit to be brought as against claimants unknown; and the declaration and notice shall be served by publishing the same in such manner and for such time as the court shall direct; and if no person shall appear in the said action, the default of the claimants unknown shall be entered, and judgment be rendered thereon.'"

[Suggested by the Attorney-General, as necessary to meet cases which may occur.]

§ 57. The said Title shall be, and the same is hereby further amended, by inserting therein, after the third section thereof, a new section, in the words following: "§ . After any lands recovered in any action against claimants unknown, shall have been sold and conveyed under the direction of the commissioners of the land-office, the judgment recovered in such action shall be conclusive upon the title of such lands, and shall bar all persons claiming or to claim the same or any part thereof; except such claimants as shall, within five years after the docketing of such judgment, commence their action for the recovery of such lands, subject to the like exceptions in favor of persons within age, insane or imprisoned, and of married women, as are contained in the statutes of this state, regulating the time of commencing actions relating to real property."

[Necessary to give effect to preceding amendment.]

§ 58. In all cases where any provision of the Revised Statutes shall not have gone into complete effect on the first day of January, one thousand eight hundred and thirty, all matters then pending shall and may proceed, until the time when such statutes shall go into complete effect, according to the laws applicable thereto and in force, on the thirty-first day of December, one thousand eight hundred and twenty-nine.

[This principle has been applied by the courts to cases of this description arising since the first of January last ; but for general information, it is thought expedient to insert it in this act.]

§ 59. The several provisions of the Revised Statutes amended in the fourth, fifth, seventh, twenty-fifth, thirtieth, thirty-second, fortieth, fiftieth and fifty-first sections of this act, shall receive the same construction as if originally enacted in the form in which the same are hereby amended.

§ 60. In every publication of the Revised Statutes hereafter to be made, the amended and additional provisions herein contained, shall be inserted in their proper places as parts of the said Statutes, and in the manner herein before prescribed ; and such alterations as may be requisite, shall be made, under the direction of the secretary of state, in the numbering of the sections in every title of the said statutes, affected by this act.

§ 61. This act shall commence and take effect from the date of the passing thereof.

IN ASSEMBLY,

April 7, 1830.

REPORT

Of the Committee on Courts of Justice, on the petition of sundry attornies and counsellors at law of the county of Montgomery, relative to a supreme court commissioner of the village of Canajoharie.

Mr. Allison, from the committee on courts of justice, on the petition of sundry attornies and counsellors at law of the county of Montgomery, praying for the passage of an act to confer additional powers on the supreme court commissioner at the village of Canajoharie,

REPORTED—

The petitioners represent that they are under the necessity of travelling from fifteen to twenty miles, for the purpose of having their bills of cost taxed, a judgment record signed, and other chamber business in the court of common pleas done; they therefore pray an act may be passed authorising the supreme court commissioner at the village of Canajoharie, to perform all such duties as any judge of the court of common pleas, of the degree of counsellor at law, could do and perform.

It appears to your committee, that the petitioners in this case are not subject to more inconvenience than the inhabitants of most other counties in the state—and your committee submit the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 5, 1830.

REPORT

Of the committee on Claims, on the petition of Pliny Jennings and David Barnes.

Mr. Van Ness, from the committee on claims, to whom was referred the petition of Pliny Jennings and David Barnes, praying a grant of lands for the revolutionary services of David Barnes, deceased,

REPORTED—

That the petition sets forth, verified by affidavit, that David Barnes, in the year 1777, enlisted as a private in Harrison's company, in Col. James Livingston's regiment of the New-York line; that he continued to serve in the New-York line until 1782, when he died at or near Albany; that his enlistment was for during the war; that his heirs or representatives have received no military bounty lands for his services.

The material facts set forth in the petition are corroborated by the affidavits of Samuel Slarron and Moses Lent, also revolutionary soldiers. But there is an affidavit accompanying the petition, materially contradicting the facts as established by the petition and the two affidavits before named. By the last affidavit it appears the soldier Barnes, the forepart of the war, was in Col. Gansevoort's regiment at Stillwater, and afterwards in Van Cortlandt's regiment; that he was sick at Snake-Hill, Orange county, and died there. The proofs of the enlistment, services and death of the soldier being thus contradictory, your committee beg leave to offer the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 13, 1830.

REPORT

Of the Standing Committee on State Prisons, on the message from the Acting Governor made on the 1st day of March.

The standing committee on state prisons and the penitentiary system, to whom was referred the message from His Honor the Acting Governor, made to the legislature on the 1st day of March last,

RESPECTFULLY REPORT :

That your committee fully concur in the opinion expressed by the Acting Governor, that the introduction of solitary dormitories into our state prisons has tended in an eminent degree to the maintenance of a discipline which has not only enabled the keepers to render the labor of the convicts productive, but has in many cases produced the moral reformation of the prisoner.

Your committee are of the opinion that this important feature of the system ought to be maintained, and that legislative provision ought to be made for the erection of additional solitary cells to meet the exigencies annually occurring from the increase of the number of the convicts.

From the reports made to this legislature by the commissioners of the state prison at Mount-Pleasant, and the inspectors of the state prison at Auburn, it appears that during the year ending on the 31st day of October last, 322 convicts were received in both prisons and 196 were discharged during that period by death, pardon and expiration of sentence, making the increase in both prisons during that year 126.

There are 550 solitary cells at the state prison at Auburn, and 800 at the state prison at Mount-Pleasant. Your committee have ascertained that the number of convicts at the former prison on the 23d day of March last was 650, and the number of convicts at the latter prison on the 6th day of April inst. was 641.

The number of convicts received in the state prison at Mount-Pleasant during the three months ending on the 31st ult. was 78, and the number discharged during that period at that prison, by expiration of sentence, death and pardon, was 20—leaving a net increase at that prison alone of 58, in the short period of three months.

From all the information within the reach of your committee, and the examination they have been able to give to the subject, they coincide in the opinion expressed by his honor the Acting Governor, that at the end of the present year there will be in both prisons about 1,500 convicts; and as the number of solitary cells in both prisons is only 1,350, it is probable that unless timely provision shall be made by the Legislature, there will at the close of the year be a deficiency of 150 cells.

It becomes the duty of the legislature to provide for the necessity thus reasonably anticipated.

As this subject addresses itself to the wisdom of the Legislature, and recommends itself to its immediate attention, your committee deemed it their duty to extend their inquiries as to the most eligible place for the erection of an additional number of solitary cells, having regard to economy in their construction.

The south wing of the Auburn prison is not adapted to the present system of solitary dormitories, and when the female convicts shall have been removed to the contemplated female state prison, or some other provision made for their accommodation, a block of cells can be built in that wing, to correspond with the arrangement in the north wing of that prison.

Two hundred solitary cells can be constructed at the state prison at Mount-Pleasant, at the expense of \$10,000, by adding another story to the present building at that place; and as the materials of stone and sand can be obtained at that place without any additional expense, and the article of lime can be furnished at an expense comparatively small, economy points to that prison as the proper place for their construction.

Your committee therefore recommend the passage of a law, authorising the immediate construction of two hundred additional solitary cells at the state prison at Mount-Pleasant.

The attention of your committee, has been directed to some of the provisions in the Revised Statutes, relating to the fiscal concerns of the state prisons, which in the opinion of your committee require some modification, and have instructed their chairman to prepare a bill containing some provisions necessary to establish the accounting at the treasury of the agents of the state prisons.

Your committee take this occasion to advert to a fact, illustrative of the excellence of the system of our state prison discipline, and creditable to the munificent liberality of the state, in regard to those institutions.

The expense of the general support of the Auburn state prison, during the year ending on the 31st of October last, was \$34,070 85, and the amount of the earnings of the convicts during that period, was \$39,993 45, making a gain to the state, by the labor of the convicts in that prison for one year, of \$5,922 60.

A result equally satisfactory may reasonably be anticipated from the operations at the state prison at Mount-Pleasant, when the buildings and works at that place which have been erected by the art and labor of the convicts shall be completed.

It is now clearly established, that under the influence of wise laws and liberal councils, governments can be relieved from the expense of supporting the convicted offender against its laws; and a discipline can be established and maintained in their prisons, by which a profit may be derived from the labor of the convict.

This result was predicted by the benevolent Howard, and furnishes a subject for the most gratifying reflection to the political economist.

Your committee have directed their chairman to ask leave to introduce a bill.

All which is respectfully submitted,

PETER GANSEVOORT,

Chairman.

IN ASSEMBLY,

April 14, 1830.

REPORT

Of the Select Committee on so much of the Acting Governor's Message as relates to Charitable Institutions, on the resolution of this House directing an inquiry into the propriety of making provision for Insane persons.

The select committee on so much of the Acting Governor's message as relates to charitable institutions, to which was referred the resolution of this house directing an inquiry into the propriety of making further legislative provision for ameliorating the condition of insane persons,

RESPECTFULLY REPORT :

That they have had said resolution under consideration, and given to the subject that attention which its importance demands, fully impressed with the opinion that few subjects are presented for legislative provision which appeal so powerfully to the sympathies of mankind and the profound consideration of the statesman, as that of providing support and protection for such as labour under mental alienation.

Man, who by nature was designed for social life, deprived of reason and judgment, becomes at once an object of terror. The alarm which he creates in society, the deep distress into which a family of which the afflicted individual may have been the head, deeply impress all with the propriety of alleviating such afflicting dispensations, and administering to such as are within the possibility of recovery the most approved means of restoration. This afflicted class

of our fellow beings have strong claims upon the liberality of government, and the sympathies of its citizens, which in the early period of our history were not appealed to in vain. Shortly after the war of the revolution the hospital in the city of New-York (which had been established before) was again liberally endowed, where insane persons were provided with the necessities and comforts of life, and in many instances, if not universally, at the public expense; and the aid of men most distinguished for medical science was gratuitously bestowed. In 1806 an increased impulse was given to the moral feeling which prevailed in favor of these sufferers, by an appropriation of \$12,500 annually, payable quarter yearly to this institution, and to be continued until the year 1857. This extensive and liberal appropriation it was believed would be sufficient to meet all just expectations, and so far ameliorate the sufferings of this distressed class of our fellow creatures, as could be effected by the munificence of government.

The business of this extensive charity was then extended, and men of distinguished and liberal philanthropy co-operated with the hospital in its work of general benevolence. Under the supervision of these disinterested philanthropists and the skill and vigilance of the medical department, it is believed that the proportion of cures was *much greater* than in later periods. The cause of this may in some degree be attributed to the then superior skill or attention, and *perhaps both*, of the medical department.

In 1816 it was represented to the legislature that an additional sum of \$10,000 was necessary to enable the hospital more extensively to accommodate this unfortunate class of our population; and on that application a law was passed appropriating an additional sum of \$10,000 annually, to be paid to the institution in quarterly payments until the year 1857. These payments have continued to be made hitherto according to the provisions of said acts. Thus the sum of \$410,000 has been appropriated to the use of this institution to enable them more extensively to accommodate *insane patients*.

It appears, however, from the message of the Acting Governor, that the number of insane within this state is so great as not to be accommodated in this asylum; and it hence became important to inquire into their number, and the most feasible means of mitigating the evils under which they labor. The data on which the important suggestions of the Governor are to be settled are fortunate-

by furnished to us by the official records of the state. According to the census of 1825 there were 819 insane persons in the state of New-York, while the average annual number of those who have been treated in the Bloomingdale asylum for the last 8 years does not exceed 140. As there is no private asylum known to be established within this state, nor any provisions made for the safe keeping of pauper lunatics, except in county poor-houses, it is evident that several hundred must be resident in private families, and under circumstances of all others (according to general experience) the least calculated to restore them to health.

The general expediency, and indeed necessity, of another lunatic asylum would seem manifest from a bare examination of these facts.

But they would appear to be further strengthened by a reference to certain statements elicited by a resolution of this house touching the New-York asylum, and the answers received thereto. From these it appears that the governors have under their charge the said hospital, and also the Bloomingdale asylum for insane patients. The officers of the hospital who receive salaries are a superintendent and matron, who are man and wife, and receive an annual salary of \$1,250, besides boarding and lodging—an assistant to the superintendent, at a salary of \$300—a clerk, \$750—an apothecary, at \$400—a librarian, at \$100, and an orderly man, at \$96. They have in the employ of the officers 10 male nurses and 12 female nurses, whose wages the last year amounted to \$1,920. They have 17 domestics or servants, whose wages the last year amounted to \$1,756 50, one house physician and one house surgeon, who are boarded in the institution. Thus it appears that they have 48 persons attached to the institution, who are provided with board and lodging therein, and who are receiving salaries or wages from the funds of the institution. The amount of salaries paid the officers the last year was \$2,621.

At the Bloomingdale asylum, there is one superintendent and matron, who being man and wife, have also a salary of \$1,250, and board and lodging; one resident physician, at a salary of \$800; one consulting physician, at \$312; ten male and four female nurses, who received the last year the sum of \$1,554; ten domestics and servants, who received the last year \$1,248 92, in all, \$5,164 92, making the *sum total* of salaries and wages of the last year, \$11,737 42. If to this be added the necessary provision for board and lodging of the officers and servants, &c. who are engaged in and about

these institutions, it will readily be perceived that those for whose benefit these large appropriations have been made, must have participated in them in a very limited degree.

It is evident from the above, that a second asylum will not be built, and maintained on a similar scale with the one now endowed by the state. And the committee cannot forbear suggesting, that in their opinion, the medical attendance authorised for that institution, does not comport with the just expectations of the community.

In every public lunatic asylum, the regular daily attendance of some highly competent physician, would seem to be indispensable, while in the Bloomingdale asylum, the physician only visits once a week, and is resident in the city, seven miles from the location of the lunatics. The citizens of this state, sending the melancholy subjects of this disease to that place, from time to time, have certainly a right to expect that the first medical attendance, which the country can afford, should be provided. It appears to your committee, that a physician of matured intellect, and of considerable experience, should take the personal responsibility and superintendence of the insane.

It ought also to be demanded, that *public reports* of the comparative utility of various modes of treatment should be made. The committee are informed, that for a number of years, no medical facts, illustrative of the success of treatment, or the mode of practice pursued in the Bloomingdale asylum, has been made known to the community. Certainly this is a debt due to the public, for its *liberal benefactions*.

The result need not to be concealed, *other institutions in neighbouring and sister states, are acquiring a higher reputation*, and many of the insane, within the state of New-York, are sent to them for treatment.

The amount expended at the Bloomingdale asylum the last year, was \$16,381 02, and that at the hospital, was \$32,388 17, of which last amount, the sum of \$7,128 was expended in extending the wings, repairing and ventilating the buildings. The total amount in the year ending on the 31st December last, at the asylum and hospital, was \$48,769 19, as will be seen by an examination of the accompts herewith submitted.

Your committee could not but notice, that the important sum of \$1,559 05, appears to have been expended for porter, beer, cider, wine, brandy, gin and rum, during the last year. Your committee are not unmindful, that some of the articles above enumerated, are occasionally used for medical purposes, but one must be quite credulous, to believe that so large an amount has been so used in these institutions in a single year. Your committee have learned, that in institutions of this kind, which are most celebrated, the use of these articles are wholly prohibited, unless under the special direction of the medical department. Under all the circumstances which have been presented, your committee are of opinion, that some explanation appears to be called for.

The large amount of money appropriated to the hospital and asylum, and the limited number which have derived benefit from them, *particularly* the latter, are considerations which force themselves upon the mind. Your committee are aware that these institutions enjoy the public confidence, and that they are under the supervision of men distinguished for their philanthropy; but the vigilance of these individuals may not have been awakened to errors which may have crept into practice. The funds appropriated for such benevolent purposes, should be carefully applied. Economy and simplicity in building should not be disregarded, lest the funds, which were designed for more useful purposes, should be dissipated in the erection of splendid edifices, better calculated to gratify the pride of aspiring ambition, than to restore to reason him who labors under mental alienation. These suggestions are made with a view to awaken inquiry on a subject of such acknowledged importance. It is proper here to add, that the superintendent of the Bloomingdale asylum was the bearer of the report of the governors, in answer to the resolution above referred to; and though your committee solicited an interview, and further and more full explanations from him, they were unable to obtain either. There may have been good reasons for avoiding an interview or explanations, and possibly if an opportunity should present, satisfactory explanations would be given. The committee, impressed with the duty required of the Legislature to provide for the wants of the insane, and particularly those whose helpless pecuniary condition renders them the more particular objects of its bounty, would suggest whether some arrangements might not be made to increase the facility, as well as the number of admissions into the New-York Asylum. If a system of retrenchment would effect this, the result would certainly be a

most desirable one. It would be proper also to compare the expenditures of this institution with that of others in the United States. All these and similar facts, which can alone be elicited by a personal examination, and the knowledge of which form the only proper basis on which to decide the expediency, and indeed the possibility, of erecting and supporting another lunatic asylum, have induced the committee to offer the following resolution.:

Resolved, (if the Senate concur herein,) That be,
and they are hereby appointed a committee for the purpose of investigating the manner in which the hospital in the city of New-York and the asylum connected therewith, have disbursed the funds which they have received from the state; and that said committee inquire particularly into the management, affairs and prospects of said establishment; the receipts and disbursements, and the propriety of making a different distribution of the funds now applied to their use, or of increasing such funds; and that they digest a system for the general and more economical distribution of such public charity. Also the propriety or necessity of erecting new establishments, more extensively to distribute such charities; the proper site for such new erection, if any should be found necessary, with a plan of the same, and an estimate of the probable expense; also the propriety of requiring the physicians of said asylum to be appointed by the Governor and Senate; and that they report the result of their doings to the next Legislature.

A STATISTICAL TABLE,

Showing the number of insane patients received annually into the New-York Hospital and Asylum since the year 1806, when the first annuity of \$12,500 was bestowed.

In 1807.	Remaining of former years and admitted during that year,.....	68
1808.	Admitted,	66
1809.	do	80
1810.	do	91
1811.	do	108
1812.	do	127
1813.	do	105
1814.	do	104
1815.	do	69
1816.	do	49
1817.	do	
1818.	do	75
1819.	do	78
1820.	do	87
1821,	to the 21st of July, admitted,.....	60

At this time the Bloomingdale Asylum was opened, and 52 patients were transferred to it from the Hospital. The numbers annually admitted, are as follows :

Part of 1821,.....	123
1822,.....	102
1823,.....	131
1824,.....	121
1825,.....	156
1826,.....	142
1827,.....	134
1828,.....	134
1829,.....	91

In the State of New-York, according to the census of 1825, there were lunatics,.....	819
Idiots,.....	1,421
	2,240

The population was.....	1,616,458
Proportion,.....	1 in 721

In England, according to some recent investigations, the proportion to the whole population appears to be 1 to every 1,000. (Whole number of lunatics and idiots, about 14,000.)

In Wales, the proportion about 1 in every 800.

In Scotland " " 1 " 574.

Average in the whole island of Great Britain, 1 in 791.

It is difficult to ascertain the number of asylums in Great Britain ; but from Sir Andrew Halliday's recent letters on this subject, it appears that there are two public ones in London ; ten county asylums in operation, and three county asylums building, or nearly completed. Total for England alone, 15. Besides these, there are numerous private asylums. After all these provisions for the treatment and safe-keeping of lunatics, there remained 1,370 in work-houses, &c., and 1,550 confined in single houses, or with their relations.

IN ASSEMBLY,

April 16, 1830.

REPORT

Of the Select Committee, on the resolution adopted
by the House on the 13th of April.

The select committee to whom was referred a resolution adopted by the House on the 13th April, 1830, in the words following, to wit :

“Resolved, That the resolution disapproving of imprisonment for debt, be referred to five members of this House, and that they are hereby instructed to report to this House a bill in conformity to the said resolution, as soon as practicable, and making the proper distinction between the honest debtor and the rogue,”

REPORT:

The committee have had the subject referred to them under consideration, and have lost no time in bringing it before the House.

The subject is of such weighty importance, and so immediately affects the interests and happiness of our fellow-citizens, that we hope to be excused, if, in the short time left us for framing a bill, we shall have paid more attention to that object than the drawing of a report, which we conceive can add but little to the stock of knowledge already possessed on the subject by the House.

The numerous petitions presented, and the constant discussion of this subject in the public prints, admonishes us that the public voice is with us in this great work.

We are imperiously called upon to pass some law, either abolishing the whole system, or so far altering it as to conform in some small degree to public opinion and public expectation.

We are aware that old prejudices are hard to eradicate. We are aware that it is often said, we had better "bear the evils that we have, than fly to those we know not of." But yet, it will be recollected, we are now old in self-government; we are now a powerful and a mighty people; our numbers, our wealth, and the general diffusion of knowledge, have made us an object of admiration to the world. Many of our institutions are modelled after the institutions of the mother country, without regard to the principles on which they are founded; and consequently, we are in many respects as far behind true liberty, as is the country from which we derive our origin.

Imprisonment for debt has long existed in England. It had its origin in the most unhappy days of that kingdom, and has continued to maintain its hold both in that country and this, regardless of the cry of liberty and the rights of man. Of late, this country has become awake to the subject, and the tyrannical custom of other days is fast giving way before the light of knowledge and experience. The state of Kentucky has already led the way, and presented an example to her sister states well worthy of imitation. It is no longer an untried experiment: clouds and darkness no longer hang upon it. The blessings to be gained and the evils to be avoided, on the abolition of this system, are admirably exemplified in the harmony, order and peace restored to the state of Kentucky.

As far as your committee are able to ascertain, this law does not exist on the continent of Europe: it is only known in England and America.

It is certainly a matter of astonishment, that it ever had an existence, but it is more surprising that it has lasted so long; a law founded in the grossest error, or the worst feelings of the human heart; a law that is not known in Spain or Portugal; a law that would be rejected by the most tyrannical government on earth; a law that cannot be sustained upon any principle, either of reason or policy, should never have existed in this land of liberty.

It will be generally conceded; that imprisonment, is *only* justifiable when it is intended to *punish* for an *offence* committed, or to *prevent* the committing of an offence, and it cannot be supposed that *imprisonment for debt* ranks under either of these heads; if debt is an offence, then it will be admitted that misfortune is crime. If on the contrary it is not an offence deserving punishment, then confine-

ment in prison, for debt, is unjustifiable. Imprisonment then cannot be intended to punish for owing the debt, but to compel a surrender of property. If then the surrender of property is the object, it would seem to be necessary before a person is sent to prison, that the creditor should show, whether the debtor *has* property which he will not surrender; this appearing, the debtor would be imprisoned for the fraud, and not for the debt; for the offence offered to the law, in attempting to deceive.

Your committee find no difficulty in "making a distinction between the honest debtor and the rogue." The law as it now stands, is sufficient on that subject. Our institutions require that we should presume *all* persons innocent, until they are *proved* guilty; if any other course should be pursued, it would completely subvert all the principles upon which we have so nobly erected the most admirable superstructure that the world ever knew. "Distinguish between the honest debtor and the rogue!" the idea appears to be novel in its requirements. The law as it now stands makes no inquiry whether a debtor is able or unable to pay; it denies that the object is punishment; indeed, the law does not consider any evidence necessary; the inquiry is never made, when an execution is demanded, whether the party will not pay without.

The question (it would appear) that we have to decide, is simply this; *shall a man be imprisoned because he owes a debt?* Shall he be deprived of his liberty, incarcerated in a jail, upon no other charge than the owing of a debt? This question, it would appear to your committee, has already been settled by the house; by an almost unanimous vote, it has been determined that the law authorising *imprisonment for debt* ought to be abolished. It has been decided to be wrong in principle and pernicious in practice.

It would seem, then, that the legislature can as easily abolish a law as to resolve that it ought to be abolished. Your committee are not aware that fraud could multiply or deceit prevail, *more* to the injury of society, after the restoration of the rights of the citizen, than it can under the present acknowledged tyrannical dispensation. Your criminal code is founded in the principle that it is better nine guilty persons should escape, than that one innocent person suffer. If then, (as we have shown, and is admitted by all) imprisonment is only right when it is intended to punish for an offence committed, or to prevent the commission of it, do you not, under the present system, punish the innocent and the guilty without distinction; nay,

do we not punish the innocent and *not* the guilty—for every one is presumed to be innocent until he is *proved* guilty—then it will necessarily follow that you are constantly, under *this* law, punishing the innocent. “A distinction between the honest debtor and the rogue” would require no splitting of hairs or nice metaphysical reasoning—honesty and villany are so diametrically opposite that they may be considered antipodes. The only way is to take the common rule—presume a man innocent until he is proved guilty—if this be done, little further can be wanting; the innocent then will most likely be acquitted and the guilty punished—the only obstacle in the way of this law—a law that not only does not make a distinction between an honest man and a rogue, but stands immediately in the way.

Your committee have taken great pains to prepare a bill with such details as to preserve all the rights of the creditor, and at the same time to preserve the principle recognised by the house in the adoption of the resolution. The bill proposes to exempt every person from arrest unless charged with fraud, and then to give to the person arrested a speedy trial by an impartial jury. If it shall appear that the person is not guilty, he shall be discharged; but if he is found guilty, he shall be imprisoned. And the act does not intend to apply to any cases where injury is the foundation of the action.

The committee ask leave to introduce a bill.

IN SENATE,

April 16, 1830.

REPORT

Of the Select Committee, to whom was referred the communication of Sam'l. M. Hopkins.

Mr. Bronson, from the select committee to whom was referred the communication of Sam'l. M. Hopkins, late commissioner for building the state prison at Sing-Sing, and inspector of the same, addressed to the Legislature, and also a like communication from the same gentleman, addressed to the Senate,

REPORTED AS FOLLOWS, TO WIT:

In relation to the last mentioned paper, that it refers to debates had in the Assembly, in which allusion was made to his accounts against the state for personal services, in discharge of his official duties, throwing suspicion upon the fairness of his accounts, to remove which he asks the investigation of a committee of the Senate.

These accounts have passed the appropriate departments, and have been sanctioned and paid by the officers, whose duty it was to investigate them. Your committee, therefore, do not deem it necessary or proper to review the acts of such officers, again to open and examine these accounts, but presume they have undergone a proper scrutiny, and have been rightly disposed of.

In relation to the document addressed to both branches of the Legislature. It charges the keeper of the prison at Sing-Sing, with mal-practices of an aggravated character, among which are, a connivance with the contractor, to stint the allowance of provisions to the convicts; want of vigilance to insure attendance; care and comforts to the sick and maimed; in suffering petty officers to in-

dict upon convicts severe and unmerited punishment for offences. He is also charged with the embezzlement of public property.

Charges of this serious character, made by an officer to whom was confided an important trust, against another officer holding a station equally responsible, and one too who has heretofore acquired for himself and for the institution over which he presides, a high degree of reputation and public favor, demand from the committee a grave, a careful and a thorough investigation.

The committee have bestowed as much time upon this subject as their numerous legislative duties would permit. They have examined the records of the building commissioners and inspectors, as well as the voluminous documents submitted to them by the inspectors, relating to this subject, a part of which consists of examinations of persons connected with the prison, under oath, and in favor of the keeper against whom the accusations were made. The remainder consists of like testimony taken *ex parte*, without the knowledge of the keeper, and with an assurance on the part of the inspectors that it should be considered confidential, and not be disclosed, except to the Legislature. They have also examined the inspector who prefers the charges, and his two associates, Messrs. Allen and Tibbits; and they have afforded Mr. Lynds an opportunity to explain and refute the charges.

Although no witnesses have been examined under oath, yet the investigation thus conducted, has dispelled some of the most aggravated charges, and greatly weakened others; still the committee do not possess the information which would justify them in exculpating entirely, or in convicting the keeper, and their inquiries have brought them to the conclusion, that they ought not, in justice to themselves, to the public, and to the parties concerned, to make their final report, until they shall have asked for permission to repair to the prison, to re-examine, openly, some of the witnesses who have been secretly examined by the inspectors, and take other testimony.

This can only be done during the recess of the Legislature, as it ought, in the opinion of the committee, to be made at the prison, where the witnesses are stationed and confined by official duties.

Your committee have been prevented from repairing to the prison during the session, from the difficulty of a winter journey, and from the still more insuperable difficulty arising from their legislative duties. It is known to the Senate that two members of the commit-

tee are each at the head of highly important committees, involving arduous and laborious duties, growing daily more arduous as the session approaches to its termination, so that the committee have not found time enough at their disposal to make this journey and investigation, even since the former has become easy and short by the opening of the Hudson.

The committee, therefore, submit the following resolution.

IN SENATE,

April 16, 1830.

REPORT

Of the Commissioners of the Land-Office of the repayment in certain cases, of monies paid for taxes pursuant to the act of October 25, 1828, Chap. 11.

Pursuant to the directions of the act entitled "An act authorising the repayment in certain cases, of monies paid for taxes," passed October 25, 1828, the commissioners of the land-office hereby report to the legislature the names of persons to whom warrants have been ordered under the said act, and the amount of such warrants respectively, as follows, viz :

Date of Order.			Names of Persons.	Am't of Warrants.
1828.	Nov.	20,	Francis Ingraham,	\$240 87
"	Dec.	5,	Orry Nichols,	100 29
"	"	"	Thomas E. Clark,	12 21
"	"	"	Joseph Wheeler,	17 32
"	"	22,	Job Smith,	39 65
"	"	"	Charles Seymour,	15 16
1829.	April	3,	John Foot,	2 57
"	"	24,	Ashbel Chapman,	27 42
"	May	29,	Aaron Konkle,	66 56
"	July	1,	Daniel Marsh,	7 52
"	Sept.	22,	William A. Haydock,	1 78
"	Nov.	27,	Israel Foote,	14 65
"	Dec.	24,	Robert Gilchrist,	17 88
1830.	Jan.	29,	Vincent Le Ray De Chaumont,	36 28

1830,	Feb. 27,	Peter Smith,.....	6 00
"	March 31,	Randall S. Street,.....	10 72

All which is respectfully submitted.

A. C. FLAGG, *Sec'y.*

SILAS WRIGHT, Jr., *Compt.*

GREENE C. BRONSON, *Att'y Gen.*

SIMEON DE WITT, *Surv. Gen.*

A. KEYSER, *Treas.*

Albany, April 16, 1830.

IN ASSEMBLY,

April 5, 1830.

REPORT

Of the Committee on the Incorporation of Cities and Villages, on the petition of sundry inhabitants of the village of Rochester, praying that said village may be incorporated into a city.

Mr. Bogert, from the committee on the incorporation of cities and villages, to which was referred the petition of sundry inhabitants of the village of Rochester, praying that said village may be incorporated into a city, and also sundry remonstrances against the same,

REPORTED—

That the committee believe, from the documents before them and other information, that a large majority of the inhabitants of Rochester, are opposed to its incorporation as a city, at this time.

Under these circumstances, it is deemed unnecessary to enter into any discussion of the merits of the question; more especially as the petitioners themselves have intimated their intention to abandon their application for the present. In justice to them, however, it may not be improper to state, that their reason for not farther urging the subject upon the attention of the present Legislature, is the unavoidable delay which has occurred in the drawing of the charter which they intended to submit.

Your committee beg leave to submit the following resolution, for the consideration of the House.

Resolved, That the prayer of the petitioners ought not to be granted.

[No. 414.]

IN ASSEMBLY,

April 8, 1830.

REPORT

Of the committee on the erection and division of towns and counties, on the petition of sundry inhabitants of the towns of Homer and Cortlandville, in the county of Cortland.

Mr. Noble, from the committee on the erection and division of town and counties, to which was referred the petition of sundry inhabitants of the towns of Homer and Cortlandville in the county of Cortland, praying the repeal of the act, entitled "An act to divide the town of Homer," passed April 11th, 1829,

REPORTED—

That they have examined the said petition, and likewise the remonstrance against the repeal of said law ; the reasons assigned by the petitioners for asking that the law above referred to may be repealed, is, that a majority of the inhabitants are in favor of the same.

By reference to the petitions and remonstrance, there appears to be more names attached to the former than the latter, that is, if we allow the petitioners a large number of names to which there is not attached a petition or remonstrance, but are claimed by the petitioners. Your committee would, however observe, that the petition was got up and circulated previous to the law to divide the said town had gone into operation, and presented to this legislature at an early day of the session, and referred to the same committee, to which it has since been recommitteed. The committee at that time reported against the application, because notices had not been given

as the law requires ; it now appears that the towns have organized under the law, and notices were given at their town-meetings recently held in said towns.

The following reasons are offered by those who remonstrate against the repeal of the law, viz : that the town of Homer previous to the division, comprised a territory of one hundred square miles, and contains a population of about 8,000 inhabitants ; that at the annual election, in the fall of 1828, there were 1,049 votes polled in said town, and that owing to the large size of the town, and its numerous population, it rendered the transaction of the public business of the town very inconvenient, and they state that if the law be repealed, they shall be obliged from the necessity of the case, to apply to the next Legislature for a law to be passed, to again divide the said town.

At the time this subject was before the last Legislature, it was discussed upon its merits in committee of the whole, and upon the final question, it passed by a large majority.

Your committee are satisfied from the statements which have been made to them, and the facts connected therewith, that the inhabitants of the said towns are much better accommodated by the division thereof, as it affords them better facilities for doing their ordinary town business, and it is also believed, that the repeal of the law would have the effect to create future contentions and strife for the passage of a law precisely the same as the one which the petitioners now ask to be repealed ; and it is also believed that applications of this kind have seldom if ever been granted by former Legislature, and your committee are satisfied it ought not in this case ; they therefore ask leave to offer the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 16, 1830.

REPORT

Of the Attorney-General, to whom was referred the Memorial of Christopher P. Bellinger and others.

The Attorney-General, to whom was referred by the Assembly, the memorial of Christopher P. Bellinger and others, containing certain charges against the grand chapter of Free-Masons, of the state of New-York, with instructions "to examine into the truth of the charges alleged in said memorial, and if in his opinion the said grand chapter have misused the privileges granted to them by their act of incorporation, that he file an information in the nature of a *quo warranto* before the proper court, to obtain a judgment or decree of forfeiture of said charter,"

RESPECTFULLY REPORTS :

That the memorialists represent themselves to be persons "delegated by a respectable portion of their fellow citizens, to represent them in an Anti-Masonic state convention;" and they set forth, in substance, that they have been informed, that the grand chapter of the state of New-York, in February, 1827, appropriated and expended a sum of money to aid in the escape, assist in the defence, and contribute to the support of persons guilty, or alleged to be guilty, of a criminal conspiracy against the liberty and life of William Morgan; also that they have been informed, that at a subsequent period, further sums of money were appropriated and expended by the said grand chapter, for the defence and support of the violators of the laws of this state.

An information in the nature of a *quo warranto*, against a corporation, can only be exhibited upon leave granted by the supreme
[No. 417.]

court or one of its justices ; and to obtain leave, either direct or circumstantial evidence must be given of the truth of the matters upon which the information is based. The Attorney-General on the tenth day of March last, addressed a letter to General Bellinger, whose name is at the head of the memorial, and who was the presiding officer in the convention therein mentioned, stating to him the necessity of obtaining evidence ; and requesting him to furnish an affidavit of the truth, or of such facts and circumstances as would legally tend to establish the truths of the charges ; and if he was not able, of his own knowledge, to make the necessary affidavit, that he would procure from some one or more of the memorialists, or from other persons, such proofs as would enable the Attorney-General to proceed in the prosecution. On the sixteenth day of the same month, an answer was received from General Bellinger, stating in substance, that he had no knowledge of the matter, only from the public prints, and reports in circulation ; and saying that certain persons had been requested, and would perhaps be able to give information concerning the business." Inquiries have been made of some of the gentlemen alluded to by General Bellinger, but without obtaining any evidence of the truth of the charges.

The memorialists have not stated from what source they derived the information upon which the memorial is based, nor what grounds, if any, there may be for giving it credit, nor even that they believe it themselves ; they only say, that they "place so much reliance upon the information communicated to them, and deem it of sufficient importance to demand a legislative inquiry." Whether mere hearsay evidence is sufficient in any case to call for a legislative inquiry, does not belong to the Attorney-General to determine ; it is sufficient for him to say, that no such proceeding as is contemplated by the resolution of the Assembly, can be instituted against this or any other corporation, in the absence of all legal proof of the matters alleged against it.

Respectfully submitted.

GREENE C. BRONSON,
Attorney-General.

April 16, 1830.

IN ASSEMBLY,

April 8, 1830.

REPORT

Of the Committee on Claims, on the petition of the heirs of Abraham Dyckman, and the petition of John Odell.

Mr. P. C. Fuller, from the committee on claims, on the petition of the heirs of Abraham Dyckman, and the petition of John Odell, praying compensation for revolutionary services,

REPORTED—

That although the petitioners have satisfied your committee that they rendered to their country during its revolutionary conflict, very zealous and valuable services, and at great expense of personal ease and private fortune ; and although it is highly probable that many persons have been liberally remunerated for services of less importance, and rendered at far less sacrifice, yet your committee are of opinion, that the petitioners do not come within the description of persons embraced in the acts and resolutions upon which these claims for military services have uniformly been founded. The petitioners acted as videttes or horse guides, for several years, and were under the direction of such of the officers of the United States troops as had command in and near the county of Westchester.

The petitioners ask of the Legislature so much bounty land as has been given heretofore to persons serving in their rank ; but your committee believing them not to come within the provisions of the acts and resolutions above referred to, and feeling unwilling to extend the rules which they think have received already a very liberal construction, beg leave to submit the following resolution :

Resolved, That the prayers of the petitioners ought not to be granted.

IN ASSEMBLY,

April 8, 1830.

REPORT

Of the select committee to which was referred the petition of certain inhabitants of the city of Schenectady, praying for an extension of the jail liberties in the county of Schenectady.

Mr. Paige, from the select committee to whom was referred the petition of certain inhabitants of the city of Schenectady, praying for an extension of the jail liberties of the county of Schenectady,

REPORTED—

That the petitioners state in their petition, that the present location of the jail liberties is injurious to debtors confined thereon, in consequence of being too limited in extent, whereby they are deprived of the ordinary means of obtaining subsistence. And they state, that they are desirous of so extending said liberties as to include the Union college, and the cotton factory, situate in the neighbourhood of the compact part of the city of Schenectady.

Your committee conceive the request of the petitioners to be reasonable, and they have therefore instructed their chairman to introduce a bill pursuant to the prayer of the petition.

IN ASSEMBLY,

April 9, 1830.

Seventh Annual Report of the Troy Savings Bank.

To the Honorable the Legislature of the State of New-York.

Pursuant to the provisions of the act entitled "An act to incorporate the Troy Savings bank," the board of managers

REPORT—

That from the first Monday of April last to the first Monday of April inst. there has been received from depositors in said Savings bank, the sum of \$20,432 55, and that during that time there has been withdrawn from the bank by depositors, the sum of \$22,661 77 including dividends paid, and that \$68 50 have been paid for contingent expenses of the bank in the same time. That there is now deposited to the credit of the said bank in the Bank of Troy, the sum of \$36,461 7, and in the Farmers' bank the sum of \$29,999 71—in the whole \$66,460 78, being the amount received by the Troy Savings bank since the commencement of the institution, and the interest which has accrued thereon, after deducting the amount refunded to depositors, including dividends paid, and the amount paid out for contingent expenses of the bank.

We further report, that we have paid the depositors dividends at the rate of 5 per cent per annum, excepting the dividend declared on the first Monday of October last, which was at the rate of 5½ per cent per annum, and that there is now a surplus of interest amounting to \$1,543 69 carried to the credit of the profit and loss account.

All which is respectfully submitted.

TOWNSEND M'COUN, *Pres't.*

J. L. LANE, *Sec'y.*
Troy, April 5, 1830.
[No. 420.]

IN ASSEMBLY,

April 12, 1830.

REPORT

Of the select committee, to whom was referred the petition of sundry inhabitants of Dutchess county, praying for a law to prohibit the killing of certain kinds of game.

Mr. Oakley, from the select committee to whom was referred the petition of sundry inhabitants of Dutchess county, praying for a law to prohibit the killing of certain kinds of game, at certain seasons of the year,

REPORTED—

That the petitioners represent, that in consequence of the killing of game in said county, at all seasons of the year, indiscriminately, and during the times of incubation as well as at other times, great destruction is made thereof, and especially of rabbits, partridges, quails and woodcock; and they represent, unless some legislative provision be made for their preservation, that there is great danger they will be wholly or nearly destroyed.

The committee find in the sixteenth title, of the twentieth chapter, of the first part of the Revised Statutes, are provisions for the preservation of the aforesaid, and other kinds of game, in the counties of Queens, Suffolk, Kings, New-York and Albany, and that these provisions, as to a part of the game therein designated, extends to the whole state; and believing the statement of the petitioners, who are numerous and respectable, and that similar provisions may be extended with propriety to the county of Dutchess, for reasons which induced the Legislature to adopt them in relation to the counties aforesaid, they have prepared a bill accordingly, and have instructed their chairman to introduce the same.

IN ASSEMBLY,

April 13, 1830.

REPORT

Of the committee on claims, to whom was referred the petition of Parmenio Adams, late Sheriff of the county of Genesee.

Mr. Van Ness, from the committee on claims, to whom was referred the petition of Parmenio Adams, late sheriff of the county of Genesee,

RESPECTFULLY REPORTS :

That the petitioner represents in substance, that in the years 1818, '19, '20 and '21, whilst he was sheriff of said county, fifty-two persons were committed and closely confined in the gaol of said county, upon warrants issued by the presidents of certain courts martial, for the non-payment of the militia fines ; that whilst they were so in custody, they were boarded at his expense ; that subsequently, he presented to the Comptroller his account for boarding them, and his fees in arresting and conveying them to gaol, which the Comptroller refused to allow ; and that having on that account retained monies in his hands which were due from him to the state, he was afterwards prosecuted, and a judgment obtained against him by the state, without any allowance for those charges, and he now asks relief in the premises. The account for board annexed to his petition, is charged at \$2 50 per week, for 87½ weeks, and amounts to \$217 87, and the charge for fees, to \$120 96. It appears that the Comptroller did allow him his charges for *commitment and gaolers fees*.

With respect to the charge for arresting and conveying the delinquents to gaol, the committee do not find any provision in the law

authorising such a charge against the state, and are satisfied that it would not be expedient to allow it in an individual case, and also doubt whether it would be advisable to make general provision by law for such allowance.

In regard to the charges for board, the committee are clearly of opinion, that they ought not to be allowed, both upon principles of economy and policy. Such charges as is evident from the amount of the claim in this instance, would, if generally allowed, make serious drafts upon the treasury, and if delinquents who are unwilling to pay their fines or to perform militia duty, should be supported at the public expense, instead of being a punishment, it would in most cases amount to a bounty for neglect of military service. It may also be observed, that if the persons so imprisoned were unable to pay their board, they were paupers, and legally entitled to relief as such from the town or county to which they belonged.

The petitioner could not have been ignorant, nor does he allege ignorance of the fact, that he was not legally bound to provide for them, and consequently he has no legal claim against the state for their board.

For the reasons above assigned, the committee offer the following resolution :

Resolved, That the prayer of the petitioner ought not to be granted.

IN ASSEMBLY,

April 14, 1830.

REPORT

Of the Committee on Courts of Justice, on the petition of the heirs and legal representatives of Samuel Clark.

Mr. Robinson, from the committee on courts of justice, to which was referred the petition of the heirs and legal representatives of Samuel Clark, late of the county of Onondaga, deceased,

REPORTED—

That it is represented that the said Samuel Clark, in his life time, purchased of the state of New-York lot No. 10, of the Onondaga purchase of the year 1817, for the sum of \$2,082, and paid one-eighth of the purchase money upon receiving the Surveyor-General's certificate; that in 1822 the purchasers of this tract petitioned the legislature, and a law was passed directing the Comptroller to remit all arrears of interest then remaining due, and to credit all previous payments of interest as so much principal, provided that one year's interest should be paid by said purchasers on or before the 22d day of December of that year. The provisions of the aforesaid act were extended by a law of 1823.

The petitioners further represent, that the said Samuel Clark had, previous to the passing of the act first aforesaid, made payments, both of principal and interest to the extent of one-half of the principal and the whole of the yearly interest, upon the said purchase, and that upon a settlement with the Comptroller, the Comptroller refused to credit the interest paid, as so much principal, except upon

the payment of one year's interest upon \$1,795, seven-eighths of the purchase money, and that the account was closed in that manner and upon that principle. The petitioners claim that their ancestor was by the terms of the law required to pay one year's interest upon the amount of principal then due only, and not one year's interest upon the sum of \$1,795 of the principal; and they represent that upon the principles assumed by the Comptroller in the settlement of the account, the intention of the legislature was not carried into effect, and that their ancestor paid \$52.83 more than by law he was required to do, and this sum the petitioners claim, with interest from 1823.

It will be seen that the remission of interest due, and the crediting the interest paid as principal, were mere gratuities to the purchasers of the above mentioned tract of land, or in other words, the state gave by the law aforesaid to the said purchasers respectively, a sum of money equal to the interest remitted and the interest paid, deducting one year's interest.

Your committee have examined the petition presented by the aforesaid purchasers in 1822, and it is found that the principal reason urged in that petition for the passage of the law of 1822 is as follows: "unless your honorable body shall see fit in your clemency, to remit some of our obligations, we must unavoidably be ruined in our circumstances."

This seems a little inconsistent with the representations in the petition referred to your committee, in which it is stated "that the interest on the lot in question had been paid yearly from the time of the purchase until the passing of the act referred to, and about one-half of the principal money had actually been paid before the passing of the said act."

The ground of complaint upon the part of the petitioners seems to be, that their ancestor having been able to pay, and having punctually paid the interest yearly, and also about one half of the principal, did not get so much from the state as those purchasers who had paid little or nothing either of the principal or interest.

It does not appear to your committee that the Comptroller made any distinction in the settlement of the accounts of the above mentioned purchasers, or that the same principle was not applied to all

the cases, nor are your committee prepared to say that the construction put by the Comptroller upon the act aforesaid is not the just and legal construction.

The committee respectfully submit the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 14, 1830.

REPORT

Of the Committee on Courts of Justices, on the petition of Elihu Clark and others.

Mr. Robinson, from the committee on courts of justice, to which was referred the petition of Elihu Clark and others, inhabitants of the county of Onondaga,

REPORTED—

That the petitioners represent, that they are of that unfortunate class of men, who have been compelled by misfortune to seek relief, by taking the benefit of the "Act to abolish imprisonment for debt in certain cases," passed April 7, 1819, and have obtained discharges under and by virtue of said act; and they complain that they are frequently prosecuted in the courts of justices of the peace, and are compelled to attend with their certificates of discharge, and defend the suits instituted against them; and they pray that the mere production of a discharge shall protect them from arrest and imprisonment, upon all final process issued by a justice of the peace. A discharge obtained under the aforesaid act, operates only upon debts due at the time of making the assignment by the insolvent, or contracted for before that time, and it will readily be seen, that the granting the prayer of the petitioners would be wholly inconsistent with the rights of creditors. A plaintiff must have an opportunity to contest the validity of a discharge, a judicial decision must be had, and sheriffs and constables can know nothing of the date or time the debt or demand upon which judgment has been rendered and the

[No. 425.]

execution issued, accrued. It appears to your committee, that no alteration of the existing law to obviate the difficulties complained of by the petitioners, (except by entirely abolishing imprisonment for debt,) can with propriety be made. The following resolution is submitted :

Resolved, That the prayer of the petitioner ought not to be granted.

IN ASSEMBLY,

April 14, 1830.

REPORT

Of the Committee on Courts of Justice, on the petition of Jacob Bergen and Thomas Smith.

Mr. Robinson, from the committee on courts of justice, on the petition of Jacob Bergen, and Thomas Smith, of Jamaica, in the county of Queens,

REPORTED—

That the petitioners represent, that they are the executors of the last will and testament of John Bergen, late of said county, deceased, and that by the said will, they were empowered among other things, to sell the real estate of the testator, if they thought proper, and were required to divide the proceeds equally among his three sons, of whom Isaac Bergen, late of said town of Jamaica, deceased, was one. That in pursuance of the power in said will, they sold the real estate of the testator, and that the said Isaac Bergen being a person of weak mind, and in the opinion of his neighbors incapable of conducting his own affairs, they expended in the purchase of a farm, two thousand dollars of the monies belonging to the said Isaac Bergen, and took a conveyance thereof, to themselves as trustees of the said Isaac Bergen, with the intent that the said Isaac Bergen should use, occupy and possess the said farm as his own. That the said Isaac Bergen occupied the said farm until his death, which took place in February, 1829; that letters of administration of the goods &c. of which were of the said Isaac Bergen, were duly granted to John B. Golder, and the petitioners cited to appear to before the surrogate of the county of Queens, and to render an account of the property of the said Isaac Bergen, which came into their hands as executors of the last will and testament of the said John Bergen. That upon the hearing before the surrogate, the surrogate refused

to allow the sum of two thousand dollars laid out in the purchase of the farm as aforesaid, upon the ground that the said petitioners had no authority to make such purchase with the monies belonging to the said Isaac Bergen, and the said petitioners, executors as aforesaid, were compelled to pay over the said two thousand dollars, with interest, deducting a reasonable rent for the farm aforesaid.

The petitioners further represent, that they are advised, that having taken the conveyance of the farm aforesaid, as trustees for the said Isaac Bergen, they have no title thereto, and they pray that a law may be passed, vesting in the said petitioners the title of the said premises, notwithstanding the trusts expressed in the said deed.

Without expressing an opinion as to the legal effect of the conveyance to the petitioners, in connection with the decree of the surrogate in the premises, your committee are of opinion that the relief sought in this case, can be obtained by application to the equity courts of the state.

The following resolution is accordingly submitted :

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 14, 1830.

REPORT

Of the Select Committee, on the petition of the judges of the county of Genesee, and the remonstrances against the same.

Mr. Fitch, from the select committee to whom was referred the petition of the judges of the county of Genesee, praying for the passage of an act to authorise the supervisors of said county to raise money to build a new jail, and sundry remonstrances against the same,

REPORTED—

That the petition states that the present jail of said county is connected with the court-house, which is a wood building erected about thirty years since, and very much decayed. That its interior arrangement is totally inadequate to fulfil the purposes of a prison, and that the dimensions and decayed state of the building renders it impossible to alter the same so as to enable the sheriff to keep the prisoners in such manner as by law he is required to do. This petition is signed by four of the judges of the court of common pleas of the county of Genesee, and the other judge has dissented by a remonstrance; and other strong remonstrances, signed by a large and respectable number of the citizens of said county, have been submitted to your committee, stating that the county is at present embarrassed with burdensome taxes; that the present jail may be repaired with comparatively small expense, and be made to answer every legal purpose of a jail; that the supervisors, at their annual meeting in November last, examined the jail, and upon such examination, the said supervisors were of the opinion that the jail could readily be repaired; and for that purpose, by a resolution of their

board ordered the raising of \$500, which sum has been raised and is now in the treasury of said county, subject to the order of the sheriff of the county for the purpose of repairing the jail. Your committee are therefore of opinion that the prayer of the petitioners ought not to be granted, and they have directed their chairman to submit the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 14, 1830.

REPORT

Of the select committee, on the petition of Abraham D. Vanderheyden.

Mr. Davis, from the select committee to which was referred the petition of Abraham D. Vanderheyden,

REPORTED—

That the committee have examined into the subject matter of the petition, and find, that John G. Vanderheyden, late of the city of Troy, deceased, held in trust for the said Abraham D. lot No. 7, in the first ward of said city; that the said John G. died intestate, without relinquishing his trust to the said Abraham D., leaving six heirs at law, three of whom are of age, who have voluntarily and without any valuable consideration, relinquished all their claim to said lot to the said Abraham D., his heirs and assigns, forever; that the remainder of the said heirs at law are infants, under the age of twenty-one years, and have no beneficial interest in said lot; that the said Abraham D. is poor, and advanced in years, and unable of himself to bear the expense of a suit in chancery to obtain the release of said infant heirs to said lot, as set forth in said petition.

The committee are, therefore, of opinion that the prayer of the petitioner ought to be granted, and have directed their chairman to bring in a bill accordingly.

IN ASSEMBLY,

April 15, 1830.

REPORT

Of the Select Committee, on the petition of Eusebius Austin.

Mr. Russell, from the select committee on so much of the Acting Governor's message as relates to charitable institutions, to which was referred the petition of Eusebius Austin,

REPORTED :

That the petitioner represents, that he has been afflicted, during a long life, with cases of mental alienation and insanity, in the members of his family, and represents the extreme difficulty attendant on taking proper care of that class of persons ; that he has now a son who has labored under this afflicting malady, and has so for the last ten years ; and for the last four years this affliction has been so extreme as to render it unfit for his own sake, as well as that of the community, that he should be permitted to go at large, and that he is now confined in a close room, provided by the petitioner for that purpose. The petitioner asks for an allowance per week to aid him in sustaining the burden thus providentially cast upon him. The particular cause of the disease is not shown, nor has it been made known to your committee, whether this unfortunate son may not, under proper curative means, yet be within the probability of recovery. But your committee are clearly of the opinion that confining the melancholy subjects of this disease, as here represented, is not well calculated to restore them to reason ; but that the subject should be removed from his too limited confinement to enjoy a more enlarged theatre of action, where old associations may be avoided, and new objects presented, thereby to elicit the attention and invite the return of reason.

This dispensation of providence, which has fallen so heavily upon the petitioner, can not but call loudly upon the sympathies of those to whom he appeals, and the committee indulge the hope that the time is not far distant, when by a well regulated system of retrenchment, those within this state who now labor under mental alienation, will participate in the funds already appropriated to the relief of insane persons. The petitioner does not repose himself upon the ground of his own inability to maintain his son, but suggests the propriety of an appropriation weekly for this class of persons generally; this the committee believe would be illy calculated to advance the general object which the government should have in view in relation to persons situated as the one now under consideration is, which is their ultimate restoration; and for these reasons the committee recommend the adoption of the following resolution:

Resolved, That it is not expedient to grant the prayer of the petitioner.

IN ASSEMBLY,

April 16, 1830.

REPORT

Of the Committee on Agriculture, relative to the draining of certain marsh lands in the county of Orange.

Mr. Nicholas, from the committee on agriculture, to whom was referred the petition of sundry inhabitants of the county of Orange, for the passage of a law changing the provisions of an existing law authorising the draining of certain marsh lands,

REPORTED—

The law providing for the draining of marsh lands within Orange county, directs the appointment of three inspectors by the court of common pleas of said county, to settle and determine the quantity of land to be benefitted by the work contemplated, and the monies necessary to be raised in order to accomplish it. Instead of the appointment of these inspectors as stated, the petitioners ask that the proprietors of the lands may be allowed to elect them by ballot, at a meeting to be held for that purpose.

From facts submitted to your committee, they are of the opinion, that such a change in the existing law is unnecessary to enable persons interested to attain the object of the law, and would operate injuriously to some of the most extensive proprietors, from the fact, as it has been represented to your committee, of a majority of the proprietors owning but a few acres of this land; consequently the large proprietors would be under the direction of individuals whose numbers, and not the extent of their interest in the lands to be re-

claimed, would give them the control of the projected work. The committee submit the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted, and that they have leave to withdraw the papers accompanying their petition.

IN ASSEMBLY,

April 19, 1830.

REPORT

Of the Committee on Colleges, Academies and Common Schools, in relation to Bartlett's Common School Manuel.

The committee on colleges, academies and common schools, to whom were referred the several petitions of M. R. Bartlett, and of sundry inhabitants of the counties of Oneida, Herkimer and Montgomery, upon the subject of the Common School Manual, compiled by said Bartlett; and also the remonstrance of the teachers of schools in the city of New-York, upon the same subject, respectfully submit the following

REPORT—

The petitioners in this case pray that a law may be passed to authorise the purchase of a copy of the said Manual for the use of each of the school districts and of the inspectors of common schools in the several towns in this state; and also to levy a tax of two cents upon every gallon of distilled spirits manufactured or sold in the state, for the purpose of creating "a school book fund," the interest of which to be annually applied to the purchase of the said Manual for gratuitous distribution throughout the state. Against the passage of such a law the remonstrants protest.

It will be at once perceived, that the various questions presented in the subject of these memorials are, in the principles they embrace, extremely important; and, in their character and consequences, deeply interesting to the people of this state. Your committee have, therefore, felt it to be their duty to give to this subject the at-

[No. 431.] 1

tion and consideration due as well to its general importance, as to the great number and respectable character of the memorialists.

To the representatives of a free and enlightened people, nothing need be said upon the importance of elementary instruction, or common school education. It is this that makes and leaves its impress upon the great mass of our population. The means of a more elevated and more refined education may, as they can never fail to, have an influence upon the literary and scientific character of a people. But under a system of self-government, a government of universal suffrage, where each individual, in the proud character of *citizen*, is often called upon to exercise that invaluable right and sacred duty of freemen, the elective franchise; and where, in the exercise of this inestimable privilege, are involved the destinies of the commonwealth, it becomes a matter of immense importance that all should be, in some degree, educated. The higher and more perfect education of the few may affect the literary reputation of the republic; but the ordinary and general education of the whole is essential to its very existence. The means of such an education, therefore, should be placed within the reach of all. Such is the important object of our common schools. These, therefore, as should ever be the case, have been wisely made accessible to every child of the republic, whatever may be his condition. It is from these primary sources of education that the great mass of the youth of our state, which constitute its wealth and its hopes for the future, receive that instruction necessary to prepare them for the common business and ordinary duties of life, and to render them wholesome and useful citizens. It is from these sources that the great mass are to derive that *knowledge* which will teach them their *rights* and their *duties*; and that *virtue* which will lead them vigilantly and firmly to protect the former, and faithfully perform the latter. The immense importance, therefore, of these primary sources of knowledge and virtue will be readily admitted, both as they regard our social and national condition, the value of our independent national existence and its perpetuation. They are equally essential whether we consider the deep stake we, as a people, have in the result of that most interesting experiment of self-government which we are making; or the value of the example which that result may furnish to others.—These primary institutions, therefore, should be cherished equally by the patriot and the philanthropist. They are peculiarly and equally objects of legislative care and of public interest. He, therefore, who successfully contributes his efforts to improve the system,

elevate the character, and extend the usefulness of our common schools, deserves the highest commendations as a public benefactor. But however laudable may be the object and commendable the motives of those who thus occupy themselves, it becomes a very grave question how far the exclusive patronage of the government to any one such individual, or the adoption, by legislative enactment, of the result of his labours, however successful and meritorious, to the exclusion of all others, would either be consistent with the genius of our government, be permitted by its duty of equal protection to all, or promote the general welfare. The granting exclusively to one or any number of individuals, a right common to all, can neither be justified, nor should be resorted to but to accomplish some great object of public good not otherwise attainable. Monopolies of whatever kind they may be, if unnecessarily multiplied or improperly extended, are as impolitic as they are odious. In nothing are they more so than in matters of literature and science. *The republic of letters* should be the freest of all republics. It should be as unrestrained as that element in which all have a common and an equal right—as free as the air we breathe. It is believed that when government has secured to the author the benefits of his labors, by securing to him their copy-right, it has done all that government should do. All else may be safely left to the discrimination of an enlightened public. That public will not fail, sooner or later, to award to real merit the just meed of praise, and to successful labor its substantial and appropriate reward. When, therefore, beyond this just point, government interferes in this matter, and either accords exclusive patronage or creates monopolies, it thereby chills the ardor of individual enterprise, extinguishes the fire of noble and generous ambition, paralyzes the efforts of genius, and takes from industry and labor the strong inducements to their exercise. In thus legislating for the temporary benefit of an individual, it ultimately sacrifices the public good.

It is believed that the application of these general principles to the case under consideration, will lead to its easy and correct decision.

It is admitted by all, that the great multiplicity and variety of elementary books used in our common schools, and the consequent want of a uniform system of instruction in those institutions, is a great evil: That this not only increases the difficulties of teaching, but also retards the progress of learning. It is to remedy this ab-

ledged and acknowledged evil that Mr. Bartlett offers his "Common School Manual," and for which he and the other petitioners in this case ask this extraordinary patronage of government.

In considering the merits of this application it will be proper to inquire,

1st. At what expense to the people of this state this proposed good is to be obtained;

2dly. What is that proposed good, and whether it be equal to its cost; and

3dly. Admitting the good proposed to be equal to its cost, whether it be either wise or just to legislate in the manner desired in this case?

1. The passage of a law asked for in this case, would involve in the outset, an expenditure of about \$80,000. This would be necessary to supply each of the school districts, and of the inspectors of common schools in the several towns in the state, with one copy of the work in question. If the effect of this partial introduction of this work would be what we must not only suppose, but intend it to be in order to justify us in going even to this extent in its encouragement, that the work is to take the place of every other now in the hands of the teachers and learners in our common schools, this would involve a further expense to the people of this state, of an amount equal to the value of the books now in use, and which would be thus rendered nearly valueless, by the entire substitution of the work in question. This may be estimated at least, at \$100,000.—Add to this the cost of the work substituted, which, allowing only one copy to every five scholars, would be \$300,000. And if to all this we add \$40,000, the amount for one year only of the tax of two cents per gallon on all distilled spirits manufactured or sold in the state, we shall have the large sum of \$470,000, to be paid by the people of this state, for the good thus offered, and in some degree forced upon them by legislative enactment. It will be readily admitted, that before we impose upon the people of this state so enormous a tax, or even any considerable part of it, we should be well satisfied, indeed confidently assured, that the good to be thereby accomplished, is neither questionable in its character, nor doubtful in its magnitude. This leads to the second inquiry proposed.

2. The committee have examined, with great care, the work in question, as far as it is as yet published, and has been submitted to them. They have also had the advantage of repeated personal interviews with its compiler, and have received from him minute and full explanations of the plan, details and execution of the work; but they have been unable to discover in it that peculiar and transcendent merit which only could justify them in recommending the passage of the law asked for, or the introduction of the work into our common schools, even at an expense much less than that which the passage of such a law would involve. On the contrary, they feel themselves constrained by a sense of duty to this house and to the people of this state, to say, that the work, in their opinion, contains many material and important defects—defects not merely of detail, but of principle. Your committee are aware that, in expressing this opinion of this work, they encounter the influence of strong recommendations in its favor, and array themselves in opposition to the authority of high and respectable names. But they know the facility with which even the most respectable recommendations are often obtained; and feel bound, in charity even, to believe that those in this case, as is stated in most of them, and as is apparent in all, have been given, either upon the authority of others or from a very cursory and imperfect examination of the work.—But if it be otherwise, your committee, while they entertain all proper deference for those respectable gentlemen who have thus lent the sanction of their names to this work; and yield to their opinions in this case, all the authority to which, under the circumstances, they may be entitled, they cannot permit either the one or the other to dissuade them from a fearless and faithful discharge of their duty.

The work in question claims to be a substitute for all others now used in our common schools. It commences with the alphabet, and when completed, it is pretended will contain the necessary instruction upon the following subjects: spelling, pronunciation, reading, elocution, arithmetic, grammar, rhetoric, prosody, geometry, mensuration, mechanical powers, book-keeping, geography, biography, history, natural sciences, law, government, and several other collateral matters. It will be readily perceived that the range of this work is no less extensive than its plan is singular. Its peculiar feature and professed distinctive excellence are that in a series of lessons comprising an entire course of common school education, it presents at every stage of the scholar's progress through this course,

a collection of lessons collaterally arranged, and suited to his attainments and capacity at that point of time.

From a careful examination of the work the committee do not think that in its execution this professed and important object has been attained. On the contrary, they find the work exceedingly defective in its execution, in this fundamental principle. They find brought together, to be presented to the scholar at the same time lessons which suppose very different attainments, and which require very different degrees of capacity. Your committee also cannot but consider this feature of the plan of the work as defective. They cannot but think that the placing together upon the same page or in the same part of the work lessons upon a great variety of subjects would, in practice, be found, to say the least, exceedingly inconvenient. It compels the scholar to look through several volumes for the whole of any one subject of his studies. But it is apprehended that this would be found not merely inconvenient in use, but would lead to serious mischiefs. It destroys that simplicity of arrangement necessary to distinctness of impression, so desirable and so useful in every system of education. The want of these would lead necessarily to confusion, and could not fail to retard instead of accelerating the scholar's progress.

Your committee do not doubt that, under the direction of a discreet and judicious teacher, the studies of the scholars may be, not only agreeably but usefully diversified. That variety may not only relieve the monotony and tediousness of exclusive confinement to a single study, but promote that elasticity of intellect which is favorable to the scholar's general progress; but such variety should be admitted with caution and judgment. Your committee attach little value to those modern discoveries or patent modes of instruction which make philosophers of children;—men of literature and science in a dozen lessons; or profess to bring the scholar acquainted with the whole circle of human knowledge almost without effort. They neither know nor believe in but one mode of becoming *learned* and *wise*: time, attention, and persevering study only can accomplish this.

Your committee are also of opinion that the compiler of this work has not succeeded in its execution, in other important particulars. They cannot approve the system of pronunciation adopted by him. The representation of the sounds of letters by a different combination of letters, instead of conventional marks or figures, leads to confusion and is, therefore, highly objectionable. This ef-

fect might not be produced in the mind of the scholar already considerably advanced, but in that of one learning orthography, it could not fail to be the case. The committee say nothing of the compiler's manner of spelling or pronouncing particular words, in which he does not seem to follow any one known standard or acknowledged authority; nor is he even uniformly consistent with himself. They also forbear to notice particularly the frequent and unnecessary repetition of the same lessons; the numerous errors in orthography, pronunciation, or accent which may be found on almost every page of the work.

In the reading department of this work, your committee are of opinion that the compiler has been but very little more successful. He has not been judicious in the selection of his lessons in this part of his work. Many of these, especially the early ones, are exceedingly objectionable. In aiming to render them simple and intelligible, they have been made ungrammatical and even vulgar. These, together with the grammatical errors which are found in every part of the work, are calculated to make wrong impressions and form bad habits, at a period of life when impressions are strong, and habits of thought and modes of expression once formed and established are apt to endure. The committee cannot forbear here to notice the manner in which the compiler, in this part of his work, frequently draws from other sources without either indicating or, in any way, giving credit to the authors from whom he thus borrows. They notice, with still stronger disapprobation, the changes and mutilations made in many beautiful and familiar passages of the most admired and classical authors in the language. This is treading on holy ground. It is warring with the dead. It is changing that cherished identity and marring that admired beauty which have been rendered sacred by time and have become consecrated in the affections of every true lover of letters, and of every friend of justice. These things also lead the youthful mind into error, and cannot be too severely discountenanced.

The committee forbear to enter further into a minute criticism of this work. They would, however, observe, that the treatises on grammar, rhetoric, arithmetic, geometry and mensuration, which it contains, have appeared to them meagre in their matter, deficient in illustration, and wanting often clearness and precision. The language and style of the work generally want that purity and correctness indispensable in every school book.

The committee cannot accord to this work the merit of economy, which is claimed for it. They feel confident that its use would fully verify the correctness of their opinion upon this point.

3. The committee hasten to the third inquiry proposed. Admitting the work in question to have none of the defects suggested, and that it possesses all the peculiar and superior merit its compiler and its friends claim for it, still the committee could not recommend the passage of the law asked for. If the work have the merit pretended, it will make its way into general use without the aid of any legislative act for that purpose; if it have not such merit, then most certainly would it be wrong to force it into general use by any such legislative act. But even supposing it to have the merit claimed for it—that it is decidedly superior to any other work of the kind—still the committee are of opinion that it would be neither wise nor just to adopt it to the exclusion of all others: For even although this may now be superior to any other work extant, yet, in this age of improvement, who would by law limit the point of perfection? Who would deny to us, upon this great interest of our state and country, the lights of time, and the benefits of experience; or who so hardy as to predict that mind, if left free and unproscribed upon this subject, may not soon improve even upon the work in question? If this be so, would it not be unwise to fasten upon the state, by a legislative act, and at an expense so enormous as that would involve, any system of instruction, however perfect it might seem, or however superior to all others, at the time, it might be acknowledged to be? Instead of promoting, this could not fail ultimately to sacrifice the great interest in question.

But your committee are of opinion that the passage of the law asked for, would be as unjust as it would be impolitic. It would lead necessarily to the sacrifice of the interests of those numerous authors and publishers whose works would be thus proscribed, and rendered valueless. These interests are often the fruits of a life of industry and laborious study. They constitute the entire wealth and sole dependence of the numerous individuals immediately concerned therein. As such, they are entitled to the equal protection of government. It has been well observed by the Superintendent of Common Schools, in his late able annual report to this House, that “the greatest experience, and much of the best talent of the country are enlisted in this business, and the fruits of their labors are constantly giving them new claims to the approbation of the

public? The interests of these numerous, respectable, and useful individuals, should be neither wantonly, unnecessarily, nor uselessly sacrificed. Sacrifices of individual interest, indeed, even to effect objects of great and acknowledged public good, should be made as rarely as possible, and even then with extreme caution; but never to promote individual benefit. The committee have been unable to perceive, either in the petition in this case, or in the work to which it relates, any good or sufficient reason for the sacrifices, both public and private, which the granting of the prayer of the petition would necessarily involve.

But it has been repeatedly stated, that "the plan of this work was the suggestion of the late Governor Clinton," and, "so far as it had progressed up to the time of his lamented death, received his favorable regard and patronage." There has been thence inferred an obligation on the state to complete and adopt what has been thus commenced. It has even been pretended that the faith of the state has been thereby pledged to that effect. The committee believe that there has been gross error upon this point. To disabuse the public in this respect, as well as to do justice to the memory of the late Governor Clinton, whose official conduct is here called in question, it will be sufficient to present an extract from an original letter written by that distinguished individual, and which letter has been submitted to the committee. The letter bears date the 24th April, 1827, and is as follows :

"Having no authority to direct the compilation of a Common School Manual, I have never officially made any communication to Mr. Bartlett of Utica on that subject; but if I recollect right, I think that, on his signifying his intention to write such a work, that I expressed my wish that he would execute it; and this I should probably have said to any other person who has exhibited ability in such cases as Mr. B. has done, particularly in an introduction to astronomy. Mr. B. shewed me his Manual last winter, but having only time to glance at it, I gave a recommendation in its favor qualified by this rapid and general view; and in so doing I had no intention to disparage the merits or diminish the sale of any similar and contemporary publications of merit."

From this extract it will be seen that so far from the plan of this work being suggested, or its execution directed by the late Governor Clinton, he merely expressed a wish when that plan was sub-

mitted to him by Mr. Bartlett, that it might be executed. Instead of supposing, however, that this work was to be adopted by the state, to the exclusion of all others, he expressly says that in any recommendation of it which he had given upon an imperfect examination, "he had no intention to disparage the merits or diminish the sale of any contemporary publications of merit."

In every view which the committee have been able to take of this subject; whether they consider the character of the work in question; the nature and importance of the principles involved in this application; or the extent and magnitude of the interests, both public and private, to be affected by its decision, the committee are unanimously of opinion that it would be as impolitic as it would be unjust to legislate in the manner desired in this case: They, therefore, submit for the consideration of the House, the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 19, 1830.

REPORT

Of the Committee on Indian Affairs, on the petition
of Martin Denny and others of the Oneida Indians.

Mr. W. K. Fuller, from the committee on Indian affairs, to whom
was referred the petition of Martin Denny and sundry others of the
Oneida Indians,

REPORTED—

That from the public documents on file in the office of the Comptroller of this state, it appears that the differences heretofore existing in relation to the distribution of the annuity alluded to by the petitioners, have been finally settled agreeably to the provisions of the act passed for that purpose at the last session. The committee are, therefore, of opinion that further legislation on the subject of those differences cannot reasonably be called for until some evidence is adduced on the part of the petitioners, that the arbitrators appointed in pursuance of the aforesaid law have been remiss in the performance of their duty.

The committee submit the following resolution :

Resolved, That the prayer of the petitioners ought not to be granted.

IN ASSEMBLY,

April 19, 1830.

REPORT Of the Albany Savings Bank.

COMMERCIAL BANK, }
Albany, April 19, 1830. }

Sir—I have the honor to transmit enclosed the annual statement of the Albany Savings Bank, shewing the state of its funds on the 1st January last, being the close of its half year's business and the day on which the interest was last funded.

I have the honor to be, sir, with great respect,
Your obedient servant,

H. BARTOW, *Treasurer.*

Hon. ERASTUS ROOT, Esq. *Speaker of the Assembly.*

Statement of the Funds of the Albany Savings Bank, Jan. 1, 1830.

DEBTOR.

The whole amount of principal deposited since the incorporation of the bank,.....	\$158,853.16
The whole amount of principal withdrawn is.....	99,955.00

\$58,898.16

Interest accrued to this date, \$16,111.54

“ withdrawn by depositors, 8,350.92

7,760.62

\$66,658.78

CREDITOR.

Canal stock—viz : \$12,500, 6 per cent,	cost \$13,437.50
“ “ “ 22,750, 5 per cent,	22,207.64

\$35,645.14

Carried forward, \$

Brought forward, \$		
Balance due from Commercial Bank,...	30,541.76	
Dividend on Canal stock, due this day,.	471.88	
	<hr/>	\$66,658.78
		<hr/>

IN SENATE,

April 19, 1830.

REPORT

Of the Select committee to which was referred so much of the Governor's message as relates to the fortifications on Staten-Island.

Mr. Sherman, from the committee on fortifications on Staten-Island, to whom was referred so much of the Governor's message as relates to the sale of the said fortifications to the general government,

REPORTED AS FOLLOWS, TO WIT :

That by an act of the Legislature, passed the 10th February, 1818, relative to the settlement of the claims and accounts of this state against the United States, the Governor was authorised to appoint an agent, to proceed to Washington for that purpose ; which agent was, under the direction of the Governor, authorised to institute a negotiation with the government of the United States, for the sale of the fortifications and ground, at the Narrows on Staten-Island, in the county of Richmond ; and report his proceedings to the Legislature, at their next session. Subsequently, and in pursuance of such authority, the then Governor Clinton, appointed Col. Pell an agent to discharge said duties ; who accordingly proceeded to Washington, and although principally devoted to the settlement of the accounts between the two governments, did enter upon a treaty for the sale of the said fortifications. And it appears that the then secretary of war, Mr. Calhoun, informed the said agent, by letter, dated 21st February, 1821, that the board of engineers had projected a plan of maritime fortifications, to be constructed by the United States, for the defence of the harbor of New-York ; and that such plan comprehended Fort Tompkins and its position at the Narrows

on Staten-Island ; and intimated a desire on the part of the general government to obtain the same. Nothing further transpired between them, and the agent returned home without effecting any specific understanding or agreement on the subject.

Nothing further appears to have been done until 1825, when Mr. Hammond was appointed an agent to liquidate the unsettled claims against the United States, and renew the negotiation respecting the sale of the fortifications. By a return of his proceedings which appears in the assembly journals of 1826, his time and attention were principally occupied in liquidating and discussing a class of disputed accounts left unsettled by the former agent. The subject of the fortifications appears to have been taken into consideration, but for want of information of a local nature, which had not been furnished to the agent, or for some other reason, the negotiation appears to have been suspended.

The last communication on the subject from the general government is contained in a letter from Mr. Barbour, the then secretary of war, to Mr. Hammond, dated 18th Nov. 1825, in which he says "the department of war is prepared to enter into a negotiation for the acquisition of Fort Tompkins and the necessary portion of land around it, and will receive any proposition you may think proper to make. But you will be pleased to state the terms very explicitly, so that a clear view may be exhibited of the condition and value of Fort Tompkins, and the price per acre of the requisite quantity of ground."

From this call for the condition and value of the works, and from information received by the committee, it appears that the agent and secretary of war differed widely as to the criterion by which the amount to be paid for the property, was to be ascertained. On the part of the United States, it was contended that they ought to pay no more than their present value—while on the other hand it was insisted that the state ought to receive the cost and expenses she had been at in constructing the fortifications. Inasmuch as the subject of general defence in war belonged to the United States, and they having neglected to construct the necessary works for that purpose, the state was under the necessity of doing the same in self defence.

The agent having returned, the legislature in 1826, in order to furnish all necessary information on the subject, passed an act ap-

propriating \$100 to defray the expense of making a survey and map of the military works at the Narrows, and an estimate of their value. The committee cannot ascertain that this act was ever carried into effect; they have caused an examination to be made at the different state offices, and no map, or survey, or estimate could be found.

Under these circumstances, the committee are of opinion that it would be advisable to renew the negotiation with the general government for the sale of the said public property: not by sending a special agent to Washington, but by a correspondence to be instituted by or under the direction of the Acting Governor for that purpose.

And the committee accordingly submit the following joint resolutions.

TITLES OF ACTS

Passed by the Legislature of the State of New-York,
at its Fifty-third Session, 1830.

1. An act concerning the county courts in the county of Delaware.
2. An act to amend an act passed April 12th, 1816, entitled "An act for the more effectual collection of taxes and assessments in the city of New-York."
3. An act relative to the courts of common pleas and general sessions in and for the county of Columbia.
4. An act authorising the appointment of a supreme court commissioner, to reside in the village of Binghamton in the county of Broome.
5. An act relative to the circuit and court of oyer and terminer, and the county courts of the county of Onondaga.
6. An act concerning the supreme court clerk's office in the town of Utica.
7. An act to authorise the overseers of the poor of the town of Johnsburch in the county of Warren, to sell and convey a certain lot of land.
8. An act relative to the line of West-street, between the Albany basin and Battery place, (late Marketfield-street,) in the city of New-York.
9. An act to alter the time of the annual meeting of the board of supervisors of the county of Westchester.
10. An act to extend the time for the collection of taxes in the town of Greenbush in the county of Rensselaer.
11. An act to incorporate the Buffalo and Hamburg turnpike company.
12. An act concerning masters in chancery.
13. An act to authorise the supervisors of the county of Ulster to raise money to build a bridge over the Shawangunk-kill.
14. An act to authorise the supervisors of Columbia county to raise an additional sum of money, to pay for the poor-house of said county.
15. An act to authorise the supervisors of Westchester county to raise an additional sum, to complete their poor-house establishment.
16. An act extending the time for the collection of taxes in the town of Johnstown.
17. An act to change the place of holding the annual meetings of the board of supervisors for the county of Chautauque.

[Titles.]

18. An act to authorise the county clerk of the county of Steuben to procure a new seal for the court of common pleas of said county.

19. An act concerning the state prison at Mount-Pleasant.

20. An act to vest certain powers in the supreme court commissioner appointed for the village of Poughkeepsie, in the county of Dutchess.

21. An act to provide for building a fire-proof clerk's office in the county of Cayuga.

22. An act to amend an act passed February 5th, 1829, entitled "An act to amend the act entitled 'An act for the disposal of lands ceded to the people of this state,' passed March 12th, 1823."

23. An act to divide the town of Romulus, in the county of Seneca.

24. An act relative to the superior court and general sessions of the city of New-York.

25. An act respecting the court-house and jail in the county of Broome.

26. An act extending the time for the collection of taxes in the town of Brooklyn, in the county of Kings.

27. An act relative to the court of common pleas and general sessions in and for the county of Greene.

28. An act concerning certain duties of the clerks of the supreme court.

29. An act extending the time limited for completing the Nassau turnpike road.

30. An act for the relief of Thomas Wilkie.

31. An act to authorise the Hudson tow-boat company to resume and continue their limited partnership.

32. An act to change the name of the Buffalo high school association.

33. An act to incorporate the Rochester athenæum.

34. An act concerning the debt due the state from the president, managers and company of the Delaware and Hudson canal company.

35. An act regulating the pay of the Guard of the state prison at Mount-Pleasant.

36. An act confirming the proceedings of justices of the peace and commissioners of deeds in certain cases.

37. An act to alter the time for holding the courts of common pleas and general sessions in the county of Cortland.

38. An act for the relief of Justus Burt.

39. An act confirming certain proceedings of the supervisors of the county of Essex.

40. An act for the relief of Frederick Stanley.

41. An act for the relief of the executors of Hannah Fisher, deceased.

42. An act in relation to certain proceedings in criminal cases, in the city of New-York, and concerning certain courts therein.

43. An act authorising the appointment of a supreme court commissioner, to reside in the county of Oswego, and to vest certain power of a judge of the common pleas in the recorder of the city of Hudson.

44. An act appropriating certain poor funds in the town of De Kalb, in the county of St. Lawrence, to the common schools of said town.

45. An act to change the surname of Elnathan Hoar.

46. An act to amend "An act to establish the Albany and Bethlehem turnpike company."

47. An act to erect the town of Amity, in the county of Allegany.

48. An act to incorporate the New-York law institute.

49. An act to divide the town of Little-Valley, in the county of Cattaraugus.

50. An act to increase the number of constables in the town of Johnstown.

51. An act to extend the time for the collection of taxes in the town of Bushwick, in the county of Kings.

52. An act to incorporate the New-York union African society.

53. An act to incorporate the Clinton hall association in the city of New-York.

54. An act altering the terms of the court of common pleas and general sessions of the county of Schenectady,

55. An act providing for the erection of a bridge over the Wal-kill, in the town of Shawangunk.

56. An act regulating highways and bridges in the county of Suffolk, Queens and Kings.

57. An act to divide the town of Marcellus, in the county of Onondaga.

58. An act requiring the register of the city and county of New-York to appoint a deputy, and concerning vacancies in said office, and in the offices of sheriffs and clerks of counties.

59. An act to incorporate the Manhattan gas light company.

60. An act to extend the time for the collection of taxes in the several wards of the city of Albany.

61. An act authorising the supervisors of Orange county to raise five thousand dollars to complete the poor-house of said county.

62. An act changing the names of William Coxhead and Jonathan Thomas Patten.

63. An act for the relief of the president, directors and company of the Brooklyn, Jamaica, and Flatbush turnpike company.

64. An act for the relief of Alida Vrooman and others.

65. An act relative to the gospel and school lots in the county of St. Lawrence.

66. An act authorising the survey of the Susquehannah and Chemung rivers, and for other purposes.

67. An act for the relief of Charlotte Sewell and others.

68. An act authorising the appointment of an additional inspector of fish in the county of Jefferson.

69. An act to amend an act entitled "An act to incorporate the New-Hartford fire company," passed April 22, 1829.

70. An act to amend an act, entitled "An act for the relief of the Stockbridge Indians," passed February 18, 1823.

71. An act to repeal certain sections of title second of the eighteenth chapter of the first part of the Revised Statutes.

72. An act to extend for a limited period the charter of the Rensselaer bridge company.

73. An act further to amend an act, entitled "An act to vest certain powers in the freeholders and inhabitants of the village of Waterford," passed 6th April, 1801.

74. An act to enable Wilhem Willink and others to purchase and hold certain real estate therein mentioned.

75. An act to incorporate the New-York life insurance and trust company.

76. An act to repeal sections fifty-four and fifty-five of the third article of the second title of the first chapter of the third part of the Revised Statutes.

77. An act to increase the number of the guard at the Mount-Pleasant state prison.

78. An act relative to the liberties of the jail in the city and county of New-York.

79. An act explanatory of so much of the act, entitled "An act to reduce the law incorporating the village of Brooklyn, and the several acts amendatory thereof, into one act, and to amend the same, as relates to the municipal court in the said village," and for other purposes, passed April 3, 1827.

80. An act relative to the sale of certain lands and tenements advertised to be sold for assessments in the city of New-York, on the twenty-second day of March, 1830.

81. An act concerning the map and atlas of the state.

82. An act for the relief of Perkins Nichols.

83. An act authorising John E. Hinman and Henry W. Schroepel to erect and maintain a dam across the Oneida river.

84. An act relative to jurors in mayors' courts.

85. An act for the relief of John C. M'Lean.

86. An act to appoint commissioners to lay out a road from the village of Sherburne, in the county of Chenango, to Waterville and Utica, in the county of Oneida.

87. An act to repeal a part of title second, article first, of chapter third of the fourth part of the Revised Statutes.

88. An act concerning the clerk's office in the county of Queens.
89. An act authorising an additional amount of money to be raised by tax, for roads and bridges in the town of Sodus.
90. An act to change the name of Jordan Wright Cook, of the town of Flushing in the county of Queens.
91. An act to divide the town of Williamstown, in the county of Oswego.
92. An act to authorise the town of North-Hempstead, in the county of Queens, to sell its common lands, and to appoint commissioners for that purpose.
93. An act to divide the town of Turin, in the county of Lewis.
94. An act to authorise the circuit judge of the sixth circuit to alter the time for holding his court in said circuit.
95. An act to divide the town of Ancram, in the county of Columbia.
96. An act for the relief of the bank for savings, in the city of New-York.
97. An act to empower the commissioners of the land-office to grant certain lands.
98. An act to incorporate the president, directors and company of the Hudson river bank.
99. An act to incorporate the president, directors and company of the Saratoga county bank.
100. An act to amend the act entitled "An act to erect the town of Lawrence in the county of St. Lawrence," passed April 21st, 1828.
101. An act authorising John Light and Henry Light to erect a dam in the Susquehannah river.
102. An act to increase the number of constables in the town of Manlius.
103. An act to increase the number of collectors for the town of Brooklyn, in the county of Kings.
104. An act to amend an act for the establishing a clerk's office of the supreme court in the village of Canandaigua, in the county of Ontario, passed February 27th, 1829.
105. An act to alter the terms of the courts of common pleas and general sessions in Ulster county.
106. An act in relation to certain public lands in the village of Oswego.
107. An act to incorporate the Buffalo fire and marine insurance company.
108. An act in relation to the redemption of lands sold for taxes in certain cases.
109. An act to loan money to the county of Cattaraugus.
110. An act to erect the town of Hamptonburgh, in the county of Orange.

111. An act further to amend an act entitled "An act to incorporate the village of Utica," passed April 7th, 1817.

112. An act authorising the sale of certain lands in the Mine Reservation, in the county of Cayuga.

113. An act to incorporate the Ontario high school.

114. An act directing the survey of a canal route from Rome to the High falls of the Black river.

115. An act relative to school district number one in the town of Palmyra and county of Wayne.

116. An act to change the name of Frederick P. Gouverneur.

117. An act to amend the seventh article of title nine of chapter nine of the first part of the Revised Statutes.

118. An act to incorporate the Jefferson cotton mills.

119. An act relative to the court of general sessions of the county of Erie.

120. An act for the relief of Daniel Carswell.

121. An act in relation to the Dutchess turnpike company.

122. An act to amend the charter of the city of New-York.

123. An act to incorporate the president, directors and company of Livingston county bank.

124. An act to incorporate the president, directors and company of the Bank of Poughkeepsie.

125. An act to authorise the trustees of Romulus to receive certain monies of David Dey.

126. An act concerning the practice of physic and surgery in this state.

127. An act relative to the sale of certain lands in the county of Genesee.

128. An act concerning the state road from Fredonia in the county of Chautauque, to the village of Perry in the county of Genesee.

129. An act to extend the time for filling up the stock of the National bank of the city of New-York.

130. An act to incorporate the president, directors and company of the Butchers' and Drovers' bank.

131. An act to incorporate the president, directors and company of the Otsego county bank.

132. An act to authorise a sale of the school lot in the village of Oswego.

133. An act to amend the act entitled "An act providing for the appointment of inspectors of unslaked lime in the county of Greene," passed March 17th, 1829.

134. An act for the relief of Robert Ferguson.

135. An act relative to the Fort Miller dam, and the assessment and payment of damages.

136. An act to amend the act entitled "An act to incorporate the Cairo bridge company," passed April 9th, 1805, and the several acts amending the same.

137. An act to incorporate a fire company at Fishkill landing in the county of Dutchess.

138. An act for continuing and regulating a ferry across the Hudson river in the town of Phillips in the county of Putnam.

139. An act authorising the supervisors of the county of St. Lawrence to levy a tax on the inhabitants of the town of Potsdam, to build a bridge across the Racket river in the village of Potsdam.

140. An act to extend the time for filling up the stock of the Merchants' exchange bank of the city of New-York.

141. An act to enable the mayor, aldermen and commonalty of the city of New-York, to raise money by tax.

142. An act to amend the charter of the Bank of Albany.

143. An act to amend the charter of the Bank of Auburn.

144. An act to amend the charter of the Canal bank of Albany.

145. An act to amend the charter of the Catskill bank.

146. An act to amend the charter of the Central bank.

147. An act to amend the charter of the Bank of Chenango.

148. An act to amend the charter of the Farmers' bank.

149. An act to amend the charter of the Bank of Genesee.

150. An act to amend the charter of the Bank of Geneva.

151. An act to amend the charter of the Bank of Ithaca.

152. An act to amend the charter of the Jefferson county bank.

153. An act to amend the charter of the Lockport bank.

154. An act to amend the charter of the Mechanics' and Farmers' bank in the city of Albany.

155. An act to amend the charter of the Merchants' and Mechanics' bank in the city of Troy.

156. An act to amend the charter of the Mohawk bank.

157. An act to amend the charter of the Bank of Monroe.

158. An act to amend the charter of the New-York state bank.

159. An act to amend the charter of the Bank of Newburgh.

160. An act to amend the charter of the Ogdensburgh bank.

161. An act to amend the charter of the Ontario bank.

162. An act to amend the charter of the Bank of Troy.

163. An act to amend the charter of the Bank of Utica.

164. An act to enable Francis Atkinson, Thomas Atkinson, George Atkinson and William Atkinson, to hold and convey real estate.

165. An act to authorise an additional number of firemen in the village of Canandaigua.

166. An act to enable Thomas Perry and James Perry, aliens, to take, hold and convey real estate, upon certain conditions therein expressed.

167. An act relative to an act to incorporate the village of Lockport, passed March 26th, 1829.

168. An act to incorporate the president, directors and company of the Onondaga county bank.

169. An act to incorporate the president, directors and company of the Mechanics' and Traders' bank.

170. An act to amend an act entitled "An act extending and supplementary to certain acts providing for the indigent deaf and dumb within this state," passed 15th April, 1825, and for other purposes.

171. An act to enable resident aliens to hold and convey real estate.

172. An act to amend the act entitled "An act to incorporate the village of Norwich."

173. An act to incorporate the Sidney and Unadilla bridge company.

174. An act to incorporate the proprietors of the long wharf at Sag Harbor in the county of Suffolk.

175. An act to incorporate the Long Island Sound harbor company.

176. An act relative to justices of the peace in the city of Hudson.

177. An act respecting the hunting of deer in Suffolk county.

178. An act in relation to the sales on certain mortgages executed to the people of this state by George M'Clure and others, and for other purposes.

179. An act for the amendment of the law relative to principals and factors or agents.

180. An act for the relief of Charlotte Selby.

181. An act concerning convicts under the age of seventeen years, and other purposes.

182. An act authorising and requiring the overseers of the poor of the town of Ellicottville to pay over certain monies in their hands, to the commissioners of highways of said town.

183. An act declaring the New-Hamburgh turnpike a public highway.

184. An act concerning the Literature fund, Oswego canal fund, and the Erie and Champlain canal fund.

185. An act to authorise the justices of the supreme court to hear and dispose of non-enumerated business in vacation.

186. An act relative to the court of common pleas for the city and county of New-York.

187. An act to amend an act passed May 4th, 1829, entitled "An act to amend an act entitled 'An act declaring a part of the Cayuta creek a public highway,' passed February 20th, 1827."

188. An act to divide the town of Cuba in the county of Allegany.

189. An act to authorise the supervisors of the county of Rensselaer to raise a tax to complete the court-house.

190. An act for the relief of William Fraser.
191. An act authorising the first judges, or any other judge of the courts of common pleas of the counties of Rensselaer and Dutchess, of the degree of counsellor at law in the supreme court, to hold the courts of common pleas in and for those counties.
192. An act authorizing and requiring the supervisors of the city and county of Albany to raise certain monies for the erection of a building in the city of Albany, for city and county purposes.
193. An act authorising the board of supervisors of Chenango county to audit and allow certain accounts therein mentioned, and for other purposes.
194. An act authorising Henry Stephens to erect a dam across the Tiohgnioaga river.
195. An act to authorise the supervisors of the county of St. Lawrence to raise monies to complete their public buildings.
196. An act to authorise Solomon Roosa to build a bridge over the Esopus creek.
197. An act authorising the establishment of a certain road in the village of Geneseo.
198. An act to incorporate the Utica cotton printing company.
199. An act to incorporate the Charlotte turnpike company.
200. An act to incorporate the Rome and New-London turnpike road company.
201. An act to amend an act entitled "An act to incorporate the Cayuga lake and inlet steam-boat company," passed February 25th, 1828.
202. An act to amend an act to incorporate the Mohawk turnpike company, passed April 4th, 1800.
203. An act in relation to the Poughkeepsie and New-Paltz ferry company.
204. An act to incorporate the Orangetown Point steam-boat company.
205. An act to amend the act passed April 12th, 1816, entitled "An act further to amend the act entitled 'An act to incorporate the Croton turnpike company.'"
206. An act to incorporate the Rensselaer glass manufacturing company.
207. An act to amend the act passed February 19th, 1819, relative to the port wardens, harbor masters, and pilots of the port of New-York.
208. An act to revive an act entitled "An act to incorporate the Whitehall and Fairhaven turnpike company."
209. An act to incorporate the village of Sherburne.
210. An act to incorporate the Walden fire company.
211. An act to incorporate a fire company in the village in the town of Lima in the county of Livingston.

212. An act to divide the town of Watson in the county of Lewis.
 213. An act relative to the town of Sherburne in the county of Chenango.

214. An act to authorise the board of supervisors of the county of Kings to build a penitentiary, and to raise money to pay for the same, and to authorise the sale of land belonging to the town of Brooklyn in said county.

215. An act to annex a part of the town of Pomfret to the town of Arkwright in the county of Chautauque.

216. An act for the relief of Elizabeth Payne, Isaac Stiles and Elizabeth Stiles.

217. An act relative to the court of general sessions in the county of Broome.

218. An act to authorise Joseph Hoar junior, to alter his name.

219. An act fixing the salary of the librarian of the State library.

220. An act to improve a road in the county of Franklin.

221. An act to amend an act entitled "An act to authorize the supervisors of the county of Orleans to raise money to build a bridge across the Oak-Orchard and Marsh creeks in the town of Carlton," passed April 25th, 1829.

222. An act for the better regulation of the wharves, piers, and slips in the city of New-York.

223. An act authorising the sale of certain lands in the village of Lewiston.

224. An act authorising Josiah Le Count to erect a dock in the town of New-Rochelle.

225. An act authorising commissioners of highways in the counties of Cattaraugus and Allegany to lay out roads through improved lands.

226. An act authorising the supervisors of the county of Washington to raise a sum of money by tax.

227. An act to incorporate the Woodbourne and Ellenville turnpike company.

228. An act to incorporate the Phoenix bridge company.

229. An act to incorporate the Ellenville and Shawangunk turnpike company.

230. An act relative to the Great Island turnpike company.

231. An act to amend an act entitled "An act to vest certain powers in the freeholders and inhabitants of the village of Kingston," passed April 6th, 1805.

232. An act relative to the New-Windsor and Cornwall turnpike road company.

233. An act relative to the Lansingburgh dry dock and hydraulic company.

234. An act directing the survey of a canal route from Rochester to the Allegany river.

- 235. An act for the relief of Lemuel Wesson.
- 236. An act to amend the act entitled "An act to authorise the erection of a new court-house and jail in the county of Otsego," passed April 5th, 1828.
- 237. An act for the relief of the grantee of Arthur Casenove.
- 238. An act to exempt certain officers and soldiers of the revolutionary army from imprisonment for debt.
- 239. An act to alter the town lines of Milford, Otsego and Huntsville, in the county of Otsego.
- 240. An act relating to common schools in the city of Albany.
- 241. An act directing a special circuit court to be held in the county of Niagara, and for other purposes.
- 242. An act to facilitate the transfer of the public stocks of this State.
- 243. An act concerning bank notes.
- 244. An act relative to the jail limits of the county of Schenectady.
- 245. An act to incorporate the village of Perry.
- 246. An act to divide the town of Mooers in the county of Clinton.
- 247. An act authorising the supervisors of the county of St. Lawrence to levy a tax on the inhabitants of the town of Oswegatchie, to build a bridge across the Oswegatchie river at the village of Heuvel.
- 248. An act to erect a new town from parts of the towns of Edwards and De Kalb in the county of St. Lawrence.
- 249. An act concerning the Capitol, and providing for the appointment of a superintendent thereof.
- 250. An act authorising the appointment of an additional inspector of lumber for the city of Albany.
- 251. An act to authorise the board of supervisors of the county of Columbia to raise the sum of four hundred dollars, to pay the debts of the town of Stuyvesant in said county.
- 252. An act to extend the jail liberties of the county of Rensselaer.
- 253. An act to authorise the medical society of the county of Herkimer to alter the time of holding their anniversary meeting.
- 254. An act to authorise Clark Hilton to erect a dam and lock upon Tonawanda creek.
- 255. An act to amend the act to incorporate the Lansingburgh turnpike company.
- 256. An act to incorporate the president, directors and company of the Greenwich bank of the city of New-York.
- 257. An act for the relief of Junia Curtis.
- 258. An act relative to the estates of insolvent debtors and jurors in certain cases.
- 259. An act relative to the printing of the Revised Statutes.

260. An act in addition to the act respecting the election of charter officers in the city of New-York.

261. An act to loan money to the county of Clinton.

262. An act relative to the appointment of auctioneers in the city of New-York.

263. An act to incorporate the Hudson and Delaware rail-road company.

264. An act for the relief of Nathan Underwood.

265. An act to incorporate the Canajoharie and Catskill rail-road company.

266. An act for the relief of Solomon Davendorff.

267. An act to incorporate the Orphan asylum society in the village of Utica.

268. An act relating to the public lands.

N. B. The laws passed at the afternoon and evening sessions of the 19th, and on the 20th April, are not included in the preceding list.

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